NOTES OF CASES.

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SUPREME COURT OF CANADA.

JUNE SESSIONS.

Ontario.]

GRAND TRUNK RAILWAY CO. OF CANADA v. FITZGERALD ET AL.

Agreement—Additional parol term—Conditions—Carriers—Wilful negligence.

The plaintiffs (respondents) sued the defendants (appellants) for breach of a contract to carry a quantity of petroleum in covered cars from London to Halifax, alleging that they so negligently carried the same upon open platform cars, whereby the barrels in which the oil was, were exposed to the sun and weather and were destroyed. At the trial a verbal contract between the plaintiffs and the defendants' agent at London was proved, whereby the defendants agreed to carry the oil of the plaintiffs in covered cars with quick despatch. The oil was forwarded in open cars, and delayed at different places on the journey and in consequence of which a large quantity was lost. On the delivery of the oil the plaintiffs signed a receipt note, which said nothing about covered cars, and which stated that the goods were subject to conditions endorsed thereon, amongst which were, viz.: "that the defendants would not be liable for leakage or delays, and that oil was carried at owner's risk."

Held, per Sir W. J. RITCHIE, C. J., and FOURNIER and HENRY, JJ., that the loss did not result from any risks by the contract imposed on the owners, but that the loss arose from the wrongful act of the defendants in placing these goods on open cars, which act was inconsistent with the contract they had entered into and in contravention as well of the undertaking as of their duty as carriers.

Per STRONG, FOURNIER, HENRY and GWYNNE, JJ.,—affirming the judgment of the Court of Common Pleas, that the verbal evidence was admissible to prove a contract to carry in covered cars, which contract the agent at London was authorized to enter into, and which must be incorporated with the writing, so as to make the whole contract one for carriage in covered cars, and therefore defendants were liable.

McMichael, Q. C., and *J. Bethune*, Q. C. for appellants.

Glass, Q. C., and *Fitzgerald*, for respondents.

Ontario.]

ERBB ET AL v. GREAT WESTERN RAILWAY CO.

Shipping note—Fraudulent receipt of agent for goods not received—Liability of Company.

One W.C., who was defendant's (respondents') agent at Chatham, and also a partner in the firm of B. & Co., in fraud of the defendants, caused printed receipts or shipping notes in the common form used by the defendants' company, to be signed by his name as respondents' agent in favour of B. & Co., for about 1,200 barrels of flour, no flour at that time having been shipped, and no flour ever having been delivered to the company to answer the said receipts. The receipts or shipping notes acknowledged that the company had received from B. & Co. the barrels of flour addressed to the appellants, and were attached to six drafts drawn by B. & Co. at sixty days, and accepted by the appellants. W. C. received the proceeds of the drafts, and afterwards absconded.

In an action brought by appellants against respondents to recover the amount of the drafts,

Held, that the act of W. C. in issuing a false and fradulent receipt to B. & Co., of which firm he was a member, for goods never delivered to the company to be forwarded, was not an act done within the scope of his authority as defendant's agent, and therefore the respondents were not liable.

FOURNIER and HENRY JJ., dissented.

J. Bethune, Q.C., for appellants.

C. Robinson, Q.C., for respondents.

Quebec.]

COTE ET AL v. MORGAN ET AL.

Writ of Prohibition to municipal corporation—Assessment Roll.

This was an appeal from a judgment of the Court of Queen's Bench (appeal side) for the Province of Quebec, maintaining a writ of prohibition issued in the Superior Court of the