

therefore the defendants had no right to hold out the transport company as a company who would deliver the lumber. The evidence, I think, displaces this contention. . . .

Neither is the plaintiff entitled to succeed as in an action for tort, as the defendants received the lumber for carriage under the terms and provisions of a special contract: *Lake Erie and Detroit River R. W. Co. v. Sales*, 26 S. C. R. 663, 667; and by this special contract, if I am right in the construction I have placed upon it, the defendants have expressly limited their obligations both as to liability and damages so as to exclude the plaintiff's right to recover.

It was also urged that the defendants were liable under sec. 284, clauses (b), (c), and (d), of the Railway Act, R. S. C. 1906 ch. 37. . . . There was and could be no complaint of the prompt and safe receipt and carriage of the lumber on the defendants' line. It was also clear, I think, from the evidence, that the defendants did all things necessary for its delivery to the Gowganda Transport Co.

If the conditions in the contract apply, as above indicated, then I find nothing in the evidence to shew that the defendants did not fulfil the same, and by returning the freight charges and the lumber they did all that they were called upon to do, in the circumstances.

The appeal should be dismissed with costs.

DIVISIONAL COURT.

MAY 10TH, 1910.

*REX v. ACKERS.

Liquor License Act—Conviction—Jurisdiction of Justices of the Peace—Information Laid before and Summons Issued by Police Magistrate—Oral Request to Justices to Act—Jurisdiction not Appearing on Face of Conviction—Warrant of Commitment—Imprisonment—Habeas Corpus—Amendment of Conviction under sec. 105—Other Defects in Warrant—Costs of Conveying to Gaol.

Motion on behalf of the defendant for his discharge from custody, on the return of a writ of habeas corpus. See ante 585, 672.

* This case will be reported in the Ontario Law Reports.