

scribed property may be intrusted or delivered for transportation." The defendants allege that they come within the words "company or person to whom" etc. . . . If it be that the goods were being carried by the defendants under a special contract with the plaintiff, his position is not improved by suing in tort rather than in contract. . . .

[Reference to *Powell v. Layton*, 2 B. & P. N. R. 365, 370; *Legge v. Tucker*, 1 H. & N. 500; *Morgan v. Raney*, 6 H. & N. 265; *Baylis v. Lintot*, L. R. 8 C. P. 345; *Lake Erie and Detroit River R. W. Co. v. Sales*, 26 S. C. R. 663.]

The condition of the special contract insisted upon is the latter part of this sentence: "It is further agreed that this company is not to be held liable or responsible for any loss or damage to said property or any part thereof, from any cause whatever, unless in every case the said loss or damage be proved to have occurred from the fraud or gross negligence of said company or their servants; nor in any event shall this company be held liable or responsible, nor shall any demand be made upon them beyond the sum of \$50, at which sum said property is hereby valued, unless the just and true value thereof is stated herein."

The argument that the defendants are entitled to the benefit of this condition of the special contract is based upon . . . *Lake Erie and Detroit River R. W. Co. v. Sales*, 26 S. C. R. 663. [Examination of that case.]

Full effect must be given to this decision, and if the present case were on all fours with the *Sales* case, these defendants should be held entitled to take advantage of the shipping bill . . . It will, however, be necessary to examine the bill with care, remembering that this is a commercial contract and should be interpreted in a business-like sense.

[The learned Judge then analysed the various provisions of the shipping bill, and pointed out wherein they differed from the provisions in question in the *Sales* case.]

If it were considered that these defendants were within the meaning of "company . . . to whom, through the company, the . . . property may be intrusted or delivered for transportation," the question would arise whether they could take advantage of this contract made by another company, for their benefit indeed, but without their privity. Since *Tweedle v. Atkinson*, 1 B. & S. 393, it has been clear law that, except under special circumstances, if A. make a contract with B. in favour of C., C. cannot take advantage of it in an action with B.—for want of privity. There may, of course, be special circumstances such as appear in *Gregory v. Williams*, 3 Mer. 582; *Mulholland v. Merriam*, 19 Gr. 288; and