

on the 11th and arriving on the 12th March, 1909. The only transportation possible from Selwood to Gowganda was by the Gowganda Transport Co., by teams over a sleigh road, impossible except during the winter season. The transport company was an independent organisation.

On the arrival at Selwood the car containing the lumber was detached and left on the siding ready for transshipment, and the agent of the transport company was notified by the delivery to him at Selwood of the shipping bill, but, owing either to accommodation of more freight at Selwood than the transport company could handle, or other cause, the lumber was not forwarded to Gowganda. The defendants reshipped it to the plaintiff without delay, and returned the freight paid to them.

This action was brought for breach of contract for non-delivery and damages for loss of profits.

The defendants relied upon the above conditions as a defence to the action.

MAGEE, J., dismissed the action with costs.

The appeal was heard by MULOCK, C.J. Ex.D., CLUTE and SUTHERLAND, JJ.

H. H. Dewart, K.C., and H. E. Stone, for the plaintiff.

I. F. Hellmuth, K.C., and G. F. Macdonnell, for the defendants.

The judgment of the Court was delivered by CLUTE, J., who, after stating the facts as above, said that neither clause 3 nor clause 6 of the conditions applied; but that clause 10 applied, "the next connecting carrier" not being limited here to a railway company operating "other lines," but meaning any connecting carrier. Clause 15 also applied; and, in this case the lumber on its return to the plaintiff's siding had not in fact depreciated in value.

It was strongly urged that the law applicable to common carriers applied . . . McGill v. Grand Trunk R. W. Co., 19 A. R. 246; . . . Jenckes Machine Co. v. Canadian Northern R. W. Co., 14 O. W. R. 307, 311. . . .

If my construction of the contract is correct, there was a limitation under the contract itself, and the numerous cases referred to where no such limitation exists are inapplicable. . . .

It was further contended that there was no effective arrangement binding the transport company to receive and deliver, and