

February 17, 1882. *McMichael, Q. C.*, and *McGregor* shewed cause. (1) As to the authority of the agent to change the bill of lading, *Erb v. Great Western R. W. Co.*, 42 U. C. R. 90, does not apply. In it there was no delivery to the company of the goods described in the bill of lading. Here there was. The goods had been delivered to the company, and a bill of lading given therefor. Plaintiff went to the Toronto agent and arranged with him; then sent his clerk to the station where the goods were, and delivered them to the station agent of the company, taking from him the bill of lading on behalf of defendants, which the station-agent was authorized to grant. The Toronto agent cancelled that bill of lading, substituting another exactly similar, except as to destination and amount of freight. The destination was changed from Liverpool to London, and the amount of freight was changed from the through rate to Liverpool to that of London. This bill the plaintiff received signed by the company's agent, and had it been delivered at London, the plaintiff would have been bound by the contract. By it the company contracted to deliver to the plaintiff at London the goods mentioned in the bill. There is no proof that Barr's agency was limited, or that he was acting beyond the scope of his powers, and the company never repudiated his act, but treated it as within his powers. That contract the company never fulfilled. They did not do so in either bill of lading, for they never delivered either in London or Liverpool. If the agent undertook more than he could perform, or if there were difficulties in the customs regulations on the other side, the plaintiff had nothing to do with them. In their contract they undertook to discharge all the duties of transfer and carriage of the goods and passing them through the customs. They are more in the capacity of express than of common carriers. The contract to deliver to the plaintiff was broken, for it was their duty when the goods arrived in England to deliver them to the plaintiff, and not merely leave them with the ship company, whom they had employed to carry across the sea; and it was not the plaintiff's duty to hunt up