

at the trial of the issues between the defendants and the third parties.

The appeal was heard by MOSS, C.J.O., GARROW, MACLAREN MEREDITH, and MAGEE, J.J.A.

W. Nesbitt, K.C., and G. A. Walker, for the defendants.

W. R. Smyth, K.C., and S. King, for the third parties.

GARROW, J.A. (after referring to the facts of the case, and the terms of the contract between the parties, which are set out in the report cited, proceeded) :—At the trial of this issue questions were raised whether the third parties were the shippers or only agents, and whether Goldstein and Robinson, or either of them, could under the circumstances be considered nominees of the shippers within the meaning of the contract, both of which were upon the evidence, properly, I think, determined in the defendants' favour. But, notwithstanding such findings in the defendants' favour, Teetzel, J., came to the conclusion that the defendants were not entitled to the indemnity claimed.

His judgment proceeds to some extent upon his view of the situation created by the absence of the signature to the special contract, which, in his opinion had the effect of remitting the parties to their common law rights, a conclusion not in my opinion essential to the determination of this issue, and to which I, therefore, while agreeing in the result, do not at present adhere. In *Hall v. North Eastern R.W. Co.*, L.R. 10 Q.B. 437, a case approved of and followed in our Courts (see *Bicknell v. Grand Trunk R.W. Co.*, 26 A.R. 431; *Sutherland v. Grand Trunk R.W. Co.*, 18 O.L.R. 139), Blackburn, J., at p. 441, says: "The plaintiff did not sign the ticket, and he was not asked to do so, but he travelled without paying any fare, and he must be taken to be in the same position as if he had signed it." The circumstances are not of course identical, but my present impression is in line with the view of Blackburn, J., that a person, who would otherwise be in the position of a trespasser, cannot after the event repudiate the contract which conferred the right which he was exercising, upon the ground that he was not aware of all its contents.

The plaintiffs by their pleading did not disaffirm the shipping contracts, but rather the reverse. They allege that they were where they were, in charge of the shipments for the third parties, and in pursuance of the defendants' regulations. It may, therefore, well be that the plaintiffs' real cause of action,