road men nor any other men can grow fond of readily. It is in urgent need of being reformed, the more so as it is a retrogression from a better form previously in use.

Future railway construction in Canada will be largely in new districts, which the roads will aid in opening up. The amount of lumber carried by existing railways in 1888, viz., 1,361,300,722 feet, gives some idea of the extent to which this mode of conveyance can be utilized in new districts. In northern Ontario there is a great field for this kind of traffic, and if the timber be not used in time it runs the risk of being burnt up on the ground, through carelessness or accident; a form of destructive conflagration against which no insurance is possible.

CARRIERS AND BILLS OF LADING.

The negociability of a bill of lading as distinguished from commercial paper is very well set forth in a recent important decision of the United States Supreme Court in the case of Friedlander *versus* the Texas and Pacific Railway Company. In this case the liability of a railway company to pay innocent holders of bills of lading forged by the company's agent is determined.

On November 16, 1883, at Sherman station, in Texas, on the eastern division of the defendant railway company's line. Easton, the agent of the company at that station, executed, as agent, a bill of lading and delivered the same to Joseph Lahnstein, therein named. Easton was the regularly authorized agent of the company to receive for shipment cotton and other freight for transportation along its line, and excute bills of lading for cotton and other freight received by him for transportation. Lahnstein indorsed the bill of lading and drew a draft on Friedlander & Co. for $8,000 payable at sight to O., and attached the bill of lading to draft and forwarded it through O. to Friedlander & Co., who paid O. the amount of the draft in good faith, in the usual course of their business as commission merchants making advances on shipments of cotton to them for sale, and without any knowledge of any fraud or misrepresentation connected with the bill of lading and draft. They had previously paid one or more drafts upon similar bills of lading signed by Easton as agent for the company, for cotton shipped them by Lahnstein, and the cotton so previously advanced upon was received by them in due course of transportation. In point of fact the bill of lading was executed by Easton fraudulently and by collusion with Lahnstein, and without receiving any cotton for transportation as was represented in the bill of lading, they two having combined together to defraud Friedlander & Co. The cotton mentioned in the bill of lading would have been worth $10,000, and the transaction was from first to last customary and in the usual course of trade, and in accordance with the usage and customs of merchants, and shippers and receivers of cotton, except that the cotton was not received, nor expected to be received, by the agent when the bill of lading was executed by him.

The question was who should lose the $8,000, or what is the same thing, whether the agent of a railroad company at one of its stations can bind the company by the execution of a bill of lading for goods not actually placed in his possession, and its delivery to a person fraudulently pretending, in collusion with said agent, that he had shipped such goods in favor of a party without notice, with whom, in furtherance of the fraud, the pretended shipper negotiates a draft, with the false bill of lading attached.

Chief Justice Fuller, in giving the judgment of the court, said, "Bills of exchange and promissory notes are representatives of money, circulating in the commercial world as such, and it is essential to enable them to perform their peculiar functions that he who purchases them should not be bound to look beyond the instrument, and that his right to enforce them should not be defeated by anything short of bad faith on his part. But bills of lading answer a different purpose, and perform different functions. They are regarded as so much cotton, grain, iron, or other articles of merchandise, in that they are symbols of ownership of the goods they cover. And as no sale of goods lost or stolen, though to a *bona fide* purchaser for value, can divest the ownership of the person who lost them or from whom they were stolen, so the sale of the symbol or mere representative of the goods can have no such effect, although it sometimes happens that the true owner, by negligence, has so put it into the power of another to occupy his position ostensibly to estop him from asserting his right as against a purchaser who has been misled to his hurt by reason of such negligence. It is true that while not negotiable as commercial paper is, bills of lading are commonly used as security for loans and advances, but it is only as evidence of ownership, special or general, of the property mentioned in them, and of the right to receive such property at the place of delivery. Such being the character of a bill of lading, can a recovery be had against a common carrier for goods never actually in its possession for transportation, because one of its agents having authority to sign bills of lading, in collusion with another person, issues the document in the absence of any goods at all?"

"The receipt of goods lies at the foundation of the contract to carry and deliver. If no goods are actually received there can be no valid contract to carry or to deliver. . . . . It is a familiar principle of law that where one of two innocent parties must suffer by the fraud of another the loss should fall upon him who enables such third person to commit the fraud; but nothing that the railroad company did or omitted to do can properly be said to have enabled Lahnstein to impose upon Friedlander & Co. The company not only did not authorize Easton to sign fictitious bills of lading, but it did not assume authority itself to issue such documents, except upon delivery of the merchandise. Easton was not the company's agent in the transaction, for there was nothing upon which the agency could act. Railroad companies are not dealers in bills of exchange, nor in bills of lading; they are carriers only, and held to rigid responsibility as such. Easton, disregarding the object for which he was employed, and not intending by his act to execute it, but wholly for the purpose of his own and of Lahnstein, became *particeps criminis* with the latter in the commission of a fraud upon Friedlander & Co., and it would be going too far to hold the company, under the circumstances, estopped from denying that it had clothed this agent with apparent authority to do an act so utterly outside the scope of his employment and of its own business. The defendant cannot be held on contract as a common carrier in the absence of goods, shipment, and shipper, nor is the action maintainable on the ground of tort."

"The law can punish roguery, but cannot always protect a purchaser from loss, and so fraud perpetrated through the device of a false bill of lading may work injury to an innocent party which cannot be repressed by a change of victim."

FIRE MATTERS IN MONTREAL.

The Montreal City Council has decided, by a vote of 15 to 12, to adopt the motion of Ald. Stevenson to give a bonus of $5,000 to Mr. Patton, late chief of the fire brigade of that city. This is probably right enough, for the late chief was a conscientious servant, according to his light, and he is now old and without means. But in the matter of what a Montreal journal calls "The Fire Engine Muddle," much less than justice will be wrought if the Council endorse the curious finding of a committee that recommended the purchase of a Silsby steam fire engine which, as we stated a week or two ago, distinctly failed to come up to the requirements laid down for such an engine, or even to its makers' own promises.

At the meeting of Council on Monday last a somewhat lively discussion took place upon the question of this engine. In response to enquiries, the Mayor said the experts had condemned the engine, but in spite of this the committee had resolved to buy it. He had instructed the City Treasurer not to pay the warrant until the Council had come to some decision. It may be that the experts were incapable, but if that were so they should never have been employed. These same experts reported, Ald. Stevenson says, that the Merrywether engine exceeded the requirements of the test by 29½ per cent., a statement, however, which did not go uncontradicted. Next we hear of a proceeding of a character which was almost worthy of the Pickwick Club. It was moved in Council that the report of the experts be referred to the City Attorney, and that payment for the engine be deferred till next meting. There was a wrangle about this, but the Mayor decided it to be in order. "Has the engine been bought?" asked one alderman, who was answered by another that the engine had been accepted unanimously by the committee and formally handed over to the Chief, to be placed in No. 7 station, and the agent had gone home. To this Ald. Stevenson, chairman of the said committee, replied that "the