

In the absence of any sure indication in the agreement the ratio of apportionment of payments for the release of lots sold should be established by adopting the simple arithmetical rule of dividing the amount of the deferred instalments stated in the agreement by the total number of lots mentioned therein.

Appeal dismissed with costs.

*Geo. Kerr and Rowell*, for appellant.

*Kerr, Q.C.*, for the respondents.

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24 March, 1896.

Manitoba.]

NORTHERN PACIFIC EXPRESS CO. V. MARTIN.

*Bailee—Express company—Receipt for parcel—Condition—Compliance with—Pleading—"Never indebted"—Plea of non-performance.*

M., sending a money parcel by express, received a receipt in a "money receipt book" which contained a provision that the money would be forwarded "subject to the printed conditions on inside front cover of this book," and one of such conditions was that the company would not be liable for any claim "unless such claim is presented in writing within sixty days from the date of loss or damage in a statement to which a copy of this contract shall be annexed." The parcel was not delivered, and M. presented his claim in writing but no copy of the contract was annexed.

*Held*, reversing the decision of the Court of Queen's Bench, Manitoba (10 Man. L. R. 595), that M. must be held to a strict compliance with the conditions of his contract with the company, and his claim was barred for want of notice.

M. brought an action for money had and received to recover the value of the parcel.

*Held*, that the company was not obliged to plead non-performance of the condition in answer to this action, as all necessary proof could be made under the plea of "never indebted."

Appeal allowed with costs.

*McCarthy, Q.C.*, for appellants.

*Ewart, Q.C.*, for respondent.