

matter up with" the agent; and they assured the agent that, if the car was found not to be as represented, they would immediately forward their cheque.

Before the car reached the Island, the bill of lading, with the draft attached, came to the hands of the bank; the draft was presented; payment was refused; and the bank returned the documents to the plaintiffs. When Steepe learned of this, he tried to induce the plaintiffs to consent to the delivery of the car without payment. This the plaintiffs would not do; but they authorised the railway company (defendants) to make delivery upon receipt of a cheque. Steepe had no knowledge that this authority had been given; but Purvis apparently said that he had made or could make arrangements with the bank. Accordingly, when the car had reached Providence Bay, Steepe and Purvis went there, and Steepe paid the freight charge to the wharfinger, in whose custody the car was, and induced him to let Steepe take it away. Purvis then returned to Gore Bay; and, after a day or two, Steepe followed in the car, and during the next few days drove the car with Purvis in it to various places to which Purvis wished to go. On the last of these days, a break-down occurred, and Purvis announced that he would not accept the car. Steepe then left the car in Purvis's barn, and returned to Stratford. Correspondence ensued; Purvis adhered to his refusal to accept the car; and finally took it to the wharf and put it in a shed, where it still was when the action was tried, in the same condition as when Steepe left it.

The plaintiffs' claim depended upon the contract between them and the defendants. The contract was in writing, in the form of a bill of lading, signed by both parties. By it, the defendants agreed to carry the car to Providence Bay "if on its road, otherwise to deliver to another carrier on the route to said destination;" and it was stipulated that the surrender of the original bill of lading, properly endorsed, should be required before the delivery of the car. Providence Bay is not on the defendants' road; and they performed this part of their contract when they handed the car over to the Meaford Transportation Company (third parties) for carriage to Providence Bay. However, endorsed upon the bill of lading was a condition making the defendants "liable for any loss, damage, or injury to" the car "caused by or resulting from the act, neglect, or default of" the third parties. The third parties have no wharf or warehouse of their own at Providence Bay; their ships dock at the Government wharf, and the goods arriving by these ships are delivered into the custody of a wharfinger appointed by the Government and paid by the