

H. E. Rose, K.C., for the defendants.

W. M. Douglas, K.C., for the plaintiff.

The judgment of the Court was delivered by BOYD, C., who said that there was plenty of evidence to uphold the conclusion of fact that the front rail in the gallery of the rink was not constructed so as to resist the pressure that might be expected to be brought upon it. . . . It was far from being absolutely safe; it was not even reasonably safe, considering what might be expected during exciting matches with an enthusiastic crowd of onlookers. . . .

[Reference to Francis v. Cockrell, L. R. 5 Q. B. 184, 501; Pollock on Torts, 8th ed., p. 508; Morney v. Scott, [1899] 1 Q. B. 992; Indermaur v. Dames, L. R. 1 C. P. 288; Duncan v. Perthshire Cricket Club, 42 Sc. L. R. 327; Valiquette v. Fraser, 39 S. C. R. 1; McCallum v. Northern R. W. Co., 45 Sc. L. R. 309.]

Appeal dismissed with costs.

DIVISIONAL COURT.

NOVEMBER 23RD, 1909.

GRAHAM v. LAIRD CO.

Sale of Goods—Injury in Transit—Loss, whether Falling on Vendor or Purchaser—Delivery to Carrier F. O. B.—Bills of Lading—Property not Passing till Payment.

Appeal by the defendants from the judgment of BRITTON, J., 14 O. W. R. 497, in favour of the plaintiff in an action for the price of 558 barrels of apples sold by the plaintiff to the defendants, and delivered to the Grand Trunk Railway Company at Belleville, to be forwarded to the plaintiff at Regina, Saskatchewan. The apples were damaged by frost in transit.

The appeal was heard by BOYD, C., MAGEE and LATCHFORD, JJ.

H. Cassels, K.C., for the defendants.

McGregor Young, K.C., and W. S. Morden, for the plaintiff.

The judgment of the Court was delivered by BOYD, C., who said that the main question to be determined was whether the property in the apples was in the buyer or the seller, or, had the