

MARCH 25TH, 1915.

## RICHARDSON v. CANADIAN PACIFIC R.W. CO.

*Carriers—Shipment of Grain—Loss by Fire in Elevator—Insurance—Marine Policy—Negligence of Carriers — Evidence—Damages—Findings of Trial Judge—Appeal—New Trial.*

Appeal by the defendants from the judgment of BRITTON, J., 7 O.W.N. 458.

The appeal was heard by FALCONBRIDGE, C.J.K.B., RIDDELL, LATCHFORD, and KELLY, JJ.

I. F. Hellmuth, K.C., and J. D. Spence, for the appellants.

J. L. Whiting, K.C., Glyn Osler, and A. B. Cunningham, for the plaintiffs, respondents.

The judgment of the Court was delivered by RIDDELL, J. :—  
On the argument of this appeal it was urged that the assured could not have succeeded in an attempt to compel the insurers to pay on any other basis than that of the policy being purely marine—and that in any event it would not have been honest for him to attempt to do so.

The members of the Court are not agreed as to what the evidence establishes in that regard on the questions of fact. The amount of the judgment being very considerable, we all think that it would be unwise to dispose of the case upon the evidence now in, as there must be evidence available which will have a material bearing on the facts.

We think, therefore, that, without expressing any opinion on the law, we should direct a new trial, upon which all the facts may be established—the evidence already in may be utilised if the parties agree.

Upon the new trial the defendants may perhaps give further evidence as to “the rules and usages of companies comprising the Canadian Fire Underwriters’ Association.”

Costs of the former trial and of this appeal to be costs in the cause unless otherwise ordered by the trial Judge.