

U. C. R. 479; O'Rourke v. G. T. R. Co., 23 U. C. R. 427; Bate v. C. P. R. Co., 14 O. R. 625; Hamilton v. G. T. R. Co., 23 U. C. R. 600; Lewis v. G. W. R. Co., 5 H. & N. 867.

Mr. McVeity, for the plaintiff, argued that the defendants could not make such a contract as that contended for on their behalf, as it was unjust and unreasonable; that their incompetency in that respect applied to all the conditions endorsed on the shipping request note; that the alleged contract was not read or explained to the plaintiff, nor was she told that there was anything in it which would be binding on her. On the contrary, she was told that it was merely a receipt for her case of goods, a statement clearly calculated to mislead the plaintiff, which manifestly was the fact. That the surrounding circumstances at the time of the delivery of the shipping and receipt notes must be taken into consideration in determining whether there was a contract. There is a wide difference between the contract made by railway companies in England and the contract alleged to have been made by the defendants with Mrs. Redgrave—the limitation in the former case being to a specific sum, while in the latter what is claimed is absolute immunity from liability. That several of the cases cited by Mr. Scott as to exemption from liability do not apply in this case. That as to the contention on the part of the defendants as to their non liability, because, as they urge, they were warehousemen after the arrival of the goods in their warehouse at Ottawa, the thing has no foundation in fact. First, they failed to give notice of the arrival of the case at Ottawa, though Mrs. Redgrave proved that she affixed a ticket at Quebec to the case specifying the street and number of her son-in-law's abode. And then the defendants' own evidence showed that the case reached the defendants' warehouse in Ottawa on the 2nd July, while Mr. Cattermole on calling for it on 6th July, was told that it had not come, and it was not secured by the plaintiff till 12th July—10 days after it should have been delivered to the plaintiff.

Mr. McVeity referred to the following authorities:—Foster v. Mackinnon, L. R., 4 C. P. 704; Pollock on Contracts, 3 Ed., p. 423; Simons v. G. W. R. Co., 2 C. B., U. S., 622;

Henderson v. Stevenson, 2 H. L. Sc. 70; Harris v. G. W. R. Co., 1 Q. B. D. 515; Steel v. G. T. R. Co., 31 U. C. C. P. 260; Smith's L.C., p. 431 (Am. ed.); Brown v. E. B. & G. R. Co., 7 U. C. C. P. 191; Shepherd v. Bristol & Exeter R. Co., L. R. 3 Ex. 189; Giles v. Taff Vale R. Co., 2 E. & B. 822; Patscheider v. G. W. R. Co., 3 Ex. D. 153; Redfield on Common Carriers, p. 93 (1st ed.)

Mr. Scott, in reply, contended that the cases cited by Mr. McVeity did not displace the case made by the defence. The jury have found a contract in writing. The burden of proof to get rid of that contract is on the plaintiff. She must excuse herself, which she has not done. In all the cases cited on behalf of the plaintiff, there was the absence of a written contract. The present case is different. It is not the duty of a carrier to give notice to owner of goods that they have arrived, or to deliver them to him except when he comes for them. (Wise v. G.W.R. Co., 25 L.J.R. 208; G.N.R. Co. v. Swaffield, 9 Ex. 132.)

[To be concluded in next issue.]

COURT OF QUEEN'S BENCH—MONTREAL.*

Imputation of payment—Note given as fraudulent preference—Knowledge by trustee.

Where J. R., trustee to an insolvent estate, is member of a firm holding insolvent's note, given it in illegal preference, and where, the purchasers of the estate having appointed the insolvent their agent for the purpose of realizing its assets, the latter pays the proceeds to J. R. :—

Held, On suit brought by trustee *de qualité* against purchasers for balance of price, that the moneys so paid will be imputed on account of the debt due trustee by purchasers ;

2. That the knowledge by J. R. of the illegal preference, which came to him as a member of the firm, is a knowledge by him in his capacity of trustee.—*Ross & Paul et al.*, Dorion, Ch. J., Tessier, Cross, Church, JJ., Nov. 22, 1887.

* To appear in Montreal Law Reports, 3 Q.B.