

MIDDLETON, J.

MAY 3RD, 1918.

*NATHANSON v. GRAND TRUNK R.W. CO.

*Railway—Carriage of Goods—Receipt for Number of Packages—
Stated by Shipper—Shortage in Delivery—Effect of Receipt—
Prima Facie Case against Carriers—Evidence to Displace—
Recovery of Nominal Sum—Costs.*

Action to recover the value of certain chattels said to have been shipped by the defendants' railway from Aylmer to Toronto, and not delivered to the plaintiff, the owner and consignee of the chattels.

The action was tried without a jury at Toronto.

George Wilkie, for the plaintiff.

D. L. McCarthy, K.C., for the defendants.

MIDDLETON, J., in a written judgment, said that the plaintiff packed his stock of boots and shoes and dry goods in a number of boxes, cartons, and bales, and, without any previous communication with the defendants, called in a carter to ship the packages. The carter applied to the defendants for car-accommodation and was told to place the goods in an empty box-car standing upon a siding at some distance from the Aylmer station. The carter placed the packages, some planks, and a counter and benches, in the car. The plaintiff arrived at the station and stated his intention of going to Toronto by a train soon about to start, and asked for a shipping bill for the goods. The bill was given to him, but the defendants' agent had no opportunity to count and did not count the packages contained in the car. The bill was marked "S.L. & C.," which was said to mean "shipper's load and count;" and the effect of this, in the eyes of railway-men, was said to be that the responsibility for the truth of the statement that the number of packages said to have been shipped had in truth been shipped, was cast upon the shipper. The car was immediately sealed by the agent, who first looked into the car but did not count the packages. In due course the car arrived at Toronto, accompanied by a way-bill, and, when it arrived, it had not been tampered with. It was unloaded by a checker and his assistants. Shortly after its arrival, less than two hours after the seal had been broken, in the freight-shed, it was found that there were four parcels less than were called for in the bills. An advice-note was sent to the plaintiff, he paid the freight, and delivery was made—the delivery-notice being marked "four pieces short." This was based upon the original receipt and upon the count made by the checker.