

MANITOBA.

COURT OF QUEEN'S BENCH.

BAIN, J.]

[March 8.]

MARTIN v. NORTHERN PACIFIC EXPRESS COMPANY.

Money had and received—Receipt only prima facie—Evidence of delivery—Common carrier—Delivery of money package sent by express.

This was an action for the recovery of \$2,000 handed to the defendants to be sent by express to the plaintiff's agent at Wawanesa.

According to the evidence of Story, the consignee, and Cornell, defendants' agent at Wawanesa, which the learned judge found not to be conflicting, what took place may be thus described: When the package containing the money was received at Wawanesa by Cornell, he called at Story's place of business and informed him of the receipt of a money package. Story then went to the express office, where he had some other business to transact with Cornell. After this was over the latter produced the express receipt book, and, pointing out with one hand the place where Story should put his signature opposite the entry of the money package, said to Story, "This is this money package," and at the same time with the other hand, while Story was signing, he took the package out of his pocket and laid it down on the table at which Story was sitting, and in front of a large book which was between Story and the package.

Story did not notice that the package had been placed on the table before him and never saw it, and, in fact, supposed it was still in the safe, where such packages were usually kept. He then went out into the waiting room and stood at the wicket while Cornell was making up the amount of some freight bills which Story had to pay. The latter forgot to ask for the money package, and left the station. Cornell, supposing that Story had picked up the package and taken it away with him, then left the office with the door open and went upstairs. During his absence it is supposed the package was stolen by some person who came into the station.

Under the circumstances the question for decision was whether the defendants were liable to make good the loss, notwithstanding that Story had acknowledged the receipt of the package by his signature.

Held, that it was the duty of the defendants or their agents to deliver the package into the hands of the consignee, or at least to draw his attention pointedly to the package when laying it down before him, and that the signing of the receipt was only *prima facie* evidence of delivery, which might be displaced by sworn testimony; that what was done by the defendants' agent was not sufficient delivery, and that the defendants were responsible for the amount.

Ewart, Q.C., and Wilson for the plaintiff.

J. D. Cameron and Dexter for the defendants.