

in his own action should be dismissed with costs.

The claim of the railway company in the second action was \$3,551.54 for freight and demurrage—by far the greater part being for demurrage.

Between the 9th March and the 6th April, 1918, Sparks shipped over the railway 16 cars of hay, consigned to his own order at Toronto, with instructions to notify M. & M., Toronto. The cars arrived in Toronto between the 20th March and the 12th April, and as they arrived the railway company notified M. & M. The bills of lading were attached to drafts drawn on M. & M. and discounted by a bank. These bills and drafts were, in due course, presented by the bank for payment, but acceptance and payment were refused.

On the 23rd April, M. & M. notified both the railway company and Sparks that they would not take the hay.

By notices dated the 25th April, the railway company advised Sparks that they intended to sell all the hay.

The railway company sold the hay from two of the cars, but the price realised was not sufficient to pay the charges. On the 21st May, they unloaded, stacked, and covered the remainder of the hay. The stack was partly burned, and what was left was sold. The railway company claimed demurrage down to the 21st May.

The learned Judge said that he was unable to agree with the contention of Sparks that notice to M. & M. was not notice to him. The bill of lading was on a printed form, approved of by the Railway Board, and the direction to notify M. & M. meant that notice of arrival might be given to M. & M.; and therefore the railway company were entitled to demurrage on the tariff scale from 48 hours after notice either to Sparks or M. & M. of the arrival of the cars until the cars ceased to be held for or by the consignor or until they were released, but not until they were unloaded.

Reference to *Hite v. Central R.R. Co. of New Jersey* (1909), 171 Fed. Repr. 370.

The railway company's claim had been calculated and allowed on an improper basis.

The appeal should be allowed, the judgment appealed from set aside, and judgment should be entered directing a reference to the Local Master at Ottawa to take the accounts and report.

The accounting should be on the following basis: the company should be allowed their carrying charges, also demurrage on the cars between the time notice was given to either Sparks or M. & M. of arrival and the 26th April; the demurrage charges to be calculated according to the schedule provided by Rule 9; the company to be allowed a reasonable sum for storing the hay between