

SPARKS V. CANADIAN PACIFIC R. W. CO.—CANADIAN PACIFIC R. W. CO. V. SPARKS—SUTHERLAND, J.—JAN. 2.

Railway—Carriage of Goods—Injury and Loss in Transit—Failure to Shew Negligence—Want of Proper Care—Freight and Demurrage Charges.—The first action was brought by Albert E. Sparks to recover \$2,938.51 as damages for the loss of hay alleged to have been caused by the negligence of the railway company in handling the hay in transit upon their railway. In the second action the railway company claimed \$3,551.51 for freight charges and demurrage in respect of the hay shipped upon the railway. The actions were tried together without a jury at Ottawa. SUTHERLAND, J., in a written judgment, said the negligence charged by Sparks consisted in the alleged unsealing of the cars of hay, unloading the hay, and improperly storing it, in consequence of which it was injured by exposure to rain and a considerable portion of it ultimately destroyed by fire. Sparks alleged that the hay was shipped in perfect condition, which the railway company denied. After a review of the evidence, the learned Judge said that he could not find that there was any delay on the part of the company in transporting the hay or that any alleged delay on their part caused damage or depreciation to it. He could not find that the defendants or their agents broke the seals of the cars or authorised the opening of them, or that the opening in Toronto (which was the place of destination) injured the hay to any appreciable extent or caused its rejection by the consignees. Upon the evidence, it must be found that some of the hay was wet before it was shipped. The company made every reasonable effort to get a suitable place to store the hay. Sparks had not shewn that injury or damage resulted to him through the negligence of the defendants for which he was entitled to recover any part of the sum claimed by him. The company proved that the freight and demurrage charges claimed were the authorised ones and covered the periods alleged. The first action should be dismissed with costs; and there should be judgment in the second action in favour of the company for \$2,862.61 with costs. C. A. Seguin, for Sparks. W. L. Scott, for the company.