

1895 THE NORTHERN PACIFIC RAIL- } APPELLANTS;
 WAY COMPANY (DEFENDANTS)... }
 *Mar. 12.
 *May 6.

AND

JAMES L. GRANT & CO. (PLAINTIFFS)..RESPONDENTS.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

Railway Co.—Carriage of goods—Carriage over connecting lines—Contract for—Authority of agent.

E., in Br. Col., being about to purchase goods from G. in Ont. signed, on request of the freight agent of the Northern Pacific Railway Company in British Columbia, a letter to G. asking him to ship goods *via* Grand Trunk Railway and Chicago & N. W. care Northern Pacific Railway at St. Pauls. This letter was forwarded to the freight agent of the Northern Pacific Railway Company at Toronto, who sent it to G. and wrote to him "I enclose you card of advice and if you will kindly fill it up when you make the shipment send it to me, I will trace and hurry them through and advise you of delivery to consignee." G. shipped the goods as suggested in this letter deliverable to his own order in British Columbia.

Held, affirming the decision of the Court of Appeal, that on arrival of the goods at St. Pauls the Northern Pacific Railway Company was bound to accept delivery of them for carriage to British Columbia and to expedite such carriage; that they were in the care of said company from St. Pauls to British Columbia; that the freight agent at Toronto had authority so to bind the company; and that the company was liable to G. for the value of the goods which were delivered to E. at British Columbia without an order from G. and not paid for.

APPEAL from a decision of the Court of Appeal for Ontario (1), affirming the judgment of the Chancery Division (2) in favour of the plaintiffs.

*PRESENT :—Sir Henry Strong C.J., and Taschereau, Gwynne, Sedgewick and King JJ.

The action was brought to recover from the defendant company the value of goods shipped by plaintiffs at Ingersoll, Ont., to Victoria, British Columbia, and improperly delivered at Victoria to one Evans, the intending purchaser, who did not pay plaintiffs the price. Evans after ordering the goods had, on request of the freight agent of the company at Victoria, written to plaintiffs as follows:—"Please deliver my shipment of bacon, ordered through Mr. James Mitchell, to be shipped as per tag below," and the said tag read "mark and ship this freight *via* Grand Trunk Railway and Chicago and North Western care Northern Pacific Railroad St. Paul. Be particular to mark in full as above." The freight agent at Victoria sent this letter and tag to one Belcher the freight agent of defendant at Toronto, who wrote to plaintiffs the following letter: "I beg to enclose order from W. W. Evans of Victoria, B. C., for shipment of bacon ordered by that firm through Mr. Jas. Mitchell. I also enclose you card of advice and if you will kindly fill up when you make the shipment send it to me, I will trace and hurry it through and advise you of delivery to consignee."

Plaintiffs shipped goods as directed delivering them to the Grand Trunk Railway Company at Ingersoll, to be delivered at Victoria to plaintiffs' own order. They were delivered to the defendant company at St. Pauls, and forwarded by it to Victoria where, without any order from the plaintiffs, they were delivered to Evans who did not pay plaintiffs for them. Plaintiffs then brought an action against the Northern Pacific Railway Co. for the value of the goods and obtained a verdict at the trial which was affirmed by the Divisional Court and the Court of Appeal.

McGregor for the appellants. The contract by the company was with Evans, who alone could sue for breach of it. *Moore v. Wilson* (1); *Davis v. James* (2).

(1) 1 T. R. 659.

(2) 5 Burr. 2680.

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Belcher could only bind the company by a contract relating to its own line. *Great Western Railway Co. v. Willis* (1); *Mullarkey v. Philadelphia Railroad Co.* (2); and see *McMillan v. Grand Trunk Railway Co.* (3).

Wells and W. Nesbitt for the respondents referred to *Hately v. Merchants' Despatch Co.* (4); *Bristol & Exeter Railway Co. v. Collins* (5).

The judgment of the court was delivered by :

KING J.—Any arrangement made at Victoria, B.C., was made with Evans, who was treated as the intended consignee, and his letter of directions to plaintiffs assumes that the latter, as vendor, is to deliver the goods at Ingersoll, Ontario. He accordingly specifies (as proposed by defendants) the route by which they are to be sent, viz., *via* Grand Trunk and Chicago and N. W. R. R. care Northern Pacific R. R. St. Pauls.

This letter of direction was transmitted through defendants' contracting freight agent at Toronto to the plaintiffs with a letter in which the defendants are made in effect to say :

"Ship your goods as requested to our care, St. Pauls *via* our connecting lines, and we will trace and hurry them through and advise you of delivery to consignee."

They thus recognize that while Evans may be the consignee, the shipper may have rights in respect of the goods which would give him an interest in their prompt and safe carriage and delivery.

Under English law (differing in this respect from American law) a company receiving goods for carriage to a point beyond its line *prima facie* contracts for the entire carriage. But it may limit its responsibility to acts or defaults occurring upon its own line, and where

(1) 18 C. B. N. S. 749.

(2) 9 Phil. 114.

(3) 16 Can. S. C. R. 543.

(4) 14 Can. S. C. R. 572.

(5) 7 H. L. Cas. 194.

this is done it and each carrier in succession comes under an obligation to deliver goods so received to the next carrier. An intending shipper might well feel concerned at being put (as has been expressed) "to the difficult task of ascertaining where any fault of carriage was or of resorting to his legal remedy in a distant state." This would naturally work to the disadvantage of such a route in competition with one on which through contracts are made.

As if recognizing this, defendants as an inducement to the shipper, say: "Send your goods by our connecting lines to our care St. Pauls and we will trace the shipment, expedite the carriage and advise of delivery." This certainly seems to imply some control over the carriage and delivery, at least after the goods reach the company at St. Pauls.

The plaintiffs did not ship goods in pursuance of Evans's direction, but shipped them to be carried as suggested, deliverable however to their own order at Victoria.

The shipping papers contained certain conditions limiting the responsibility of the Grand Trunk Railway, which it is assumed had the effect of confining the responsibility of that company to its own line.

From the correspondence between plaintiffs and Belcher on the day of the shipment, and upon the next day, and from Belcher's letter to the general freight agent, I think it appears that the shipment as made was treated as though Belcher's letter of 18th June was applicable to it.

Now limiting our view to what would take place when the goods reached St. Pauls; would the defendant company be then free to refuse to receive the goods or to delay in receiving them? It seems to me that what took place at Ingersoll bound the company promptly to receive the goods, and to hurry them

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1895 through and advise of delivery. More than that, I
 think that the facts show a contract upon shipment at
 THE ^{PROV.} NORTHERN PACIFIC RAILWAY COMPANY St. Pauls, in ordinary course, they would continue in
 their care.

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 GRANT. The route tags were put into the hands of their con-
 King J. tracting freight agents by the company to use in the
 diversion of traffic to their road, and the fair representa-
 tion involved in them was that their company was the
 only one concerned in the carriage from St. Pauls
 onward. This is strengthened by the undertaking to
 advise of delivery to consignee. I am, therefore, of
 opinion that in the circumstances, the defendants are
 responsible for misdelivery.

As to Belcher's authority, it seems to me that if his
 office of contracting freight agent for Ontario had any
 significance at all, he could make contracts of this sort.
 Shippers in Ontario would not be apt to be concerned
 about local freight rates from St. Pauls to Tacoma.
 Besides the representation as to the goods being in care
 of the company after reaching St. Pauls was the direct
 act of the company itself.

Upon the whole therefore, I am inclined to think
 that the appeal should be dismissed.

Appeal dismissed with costs.

Solicitors for appellants: *Bigelow & Smyth.*

Solicitor for respondents: *Thomas Wells.*
