

IN THE MATTER of the Petition of Right of

1904  
Nov. 14.

EBENEZER WHEATLEY.....SUPPLIANT;

AND

HIS MAJESTY THE KING. ....RESPONDENT.

*Government Railway—Carriage of Goods—Breach of contract—Damages—  
Negligence.*

The suppliant sought to recover a sum of \$886.38 alleged to have been lost by him on a shipment of sheep undertaken to be carried by the Crown from Charlottetown, P.E.I. to Boston, U.S.A. The loss was occasioned by the sheep not arriving in Boston before the sailing of a steam-ship thence for England on which space had been engaged for them; and the cause of such failure was lack of room to forward them on a steam-boat by which connections are made between the Summerside terminus of the P.E.I. Railway and Pointe du Chêne, N.B., a point on the Intercolonial Railway. The suppliant alleged that before the shipment was made the freight agent of the P.E. Island Railway, at Charlottetown, represented to him that if the sheep were shipped at Charlottetown on a certain date, which was done, they would arrive in Boston on time.

*Held*, that even if the suppliant had proved, which he failed to do, that this representation had been made, it would have been inconsistent with the terms of the way-bill and contrary to the regulations of the Prince Edward Island Railway, and therefore in excess of the freight agent's authority.

2. That the evidence did not disclose negligence on the part of any officer or servant of the Crown within the meaning of section 16 (c) of *The Exchequer Court Act*.

**P**ETITION OF RIGHT for damages for a breach of contract to carry goods on a Government railway.

The facts of the case are stated in the reasons for judgment.

July 26th, 1904.

The case was tried at Charlottetown, P.E.I.

*W. A. Weeks*, for the suppliant, contended that there was a contract by the Crown to carry the sheep from

Charlottetown to Boston, to be delivered within a given time at the side of the steam-ship *Michigan*, for transportation to Liverpool, G.B. Owing to the negligence of the Crown's servants, the sheep were not delivered before the steam-ship sailed from Boston, and the suppliant sustained loss. The Crown is clearly liable. *Sutton v. Ciceri* (1); *Taylor v. Great Northern Railway Co.* (2); *Simons v. Great Western Railway Co.* (3); *Beal v. South Devon Railway Co.* (4); *Ashendon v. London & Brighton Railway Co.* (5); *Manchester, Sheffield, &c., Railway Co. v. Brown* (6); *Dickson v. Great Northern Railway Co.* (7); *McManus v. Lancashire and Yorkshire Railway Co.* (8); *Watson v. Little* (9); *Rooth v. North Eastern Railway Co.* (10); *Nottebohn v. Richter* (11).

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The contract of carriage was not affected by the condition exempting the railway from negligence on the back of the way-bill, because such a condition would be unreasonable under the circumstances of this case. In any event, however, the phrase "damage for detention or delay" means detention and delay not caused by negligence.

*F. L. Hazard, K.C.*, for the respondent, said that the Crown's case was clear, and he would not offer any argument.

THE JUDGE OF THE EXCHEQUER COURT now (November 14th, 1904), delivered judgment.

The petition is brought to recover the sum of \$886.38 alleged to have to have been lost on a shipment of sheep from Charlottetown to Boston, thence by steam-

(1) 15 App. Cas. 144.

(2) L. R. 1 C. P. at p. 388.

(3) 18 C. B. 805

(4) 5 H. &amp; N. 875.

(5) 5 Ex. Div. 190.

(6) 8 App. Cas. 703.

(7) 18 Q. B. D. 176.

(8) 4 H. &amp; N. 327.

(9) 5 H. &amp; N. at p. 477.

(10) L. R. 2 Ex. 173.

(11) 18 Q. B. D. 63

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ship to Liverpool. The loss was occasioned by the sheep not arriving at Boston in time to be shipped by the steam-ship on which space had been engaged for them. The suppliant had arranged to ship the sheep from Boston by the steam-ship *Michigan*, which sailed from that port on the 17th of November, 1900. Before engaging space for the sheep on the *Michigan*, the suppliant had made enquiries, of the freight agent, at Charlottown, of the Prince Edward Island Railway, as to the latest time at which the sheep could be shipped at Charlottown to catch the steam-ship sailing on the 17th of November, to which, according to the suppliant's testimony, Mr. McDonald, the agent, after making enquiries answered that if the sheep were shipped on Monday, the 12th of November, by the railway they would be delivered at Boston on the evening of the 15th or the morning of the 16th. Mr. McDonald denies having told the suppliant that if he shipped his sheep on Monday, the 12th of November, they would arrive in Boston on the 16th of that month. But he admits that he made the necessary enquiries by telegraph, and having received an answer that the sheep would have to cross from Summerside to Pointe du Chêne on Tuesday (the 13th) to reach Boston on Friday (the 16th) he informed the suppliant to that effect. The suppliant also affirms, and Mr. McDonald denies, that the latter on this occasion mentioned, represented to the former that all arrangements had been made whereby if the sheep were shipped at Charlottetown on Monday the 12th of November they would be at Boston on the night of the 15th, or morning of the 16th, of that month.

The sheep were shipped at Charlottetown on the 12th. It was intended that the cars in which they were loaded should be attached to a train that left Charlottetown for Summerside at twenty minutes after three o'clock of that day; but, owing to some

delay which the suppliant says was caused by the action of the railway authorities, and for which the latter say the suppliant was responsible, the cars were not sent out by that train but by a later one leaving between five and six o'clock. But nothing turns on this as the sheep arrived at Summerside in time to be shipped on Tuesday the 13th of November, if there had been room for them on the steam-ship with which, at that port, the Prince Edward Island Railway makes connections for Pointe du Chêne. As it turned out there was no space on the steam-ship available for this shipment of sheep. Consequently they were delayed a day, and other delays occurring afterwards, the *Michigan* had sailed before the sheep arrived at Boston.

There are only two grounds on which this petition could be maintained. First on the ground upon which the suppliant most strongly relies that the Crown through its officers undertook to deliver the sheep at Boston not later than the 16th of November; and, secondly, that the loss or injury complained of resulted from the negligence of an officer or servant of the Crown while acting within the scope of his duties or employment within the meaning of clause (c) of the 16th section of *The Exchequer Court Act*.

As to the first ground, I do not think that Mr. McDonald, the freight agent, made any such bargain or contract as that which it is attempted to set up in this case, and it is clear that if he had attempted to do so, he would have exceeded his authority as freight agent. Such an undertaking or contract would have been inconsistent with the terms of the way-bill that was signed, and the regulations by which the carriage of freight on the Prince Edward Railway is governed (1), and wholly beyond the authority of the agent to make.

(1) See, among others, the 3rd and 15th clauses of the general conditions of carriage on the Prince Edward Island Railway.

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Then, as to the other ground, it does not seem to me that there was any negligence to bring the case within the statute referred to. It was argued that McDonald should, under the circumstances, have secured space for the sheep on the steam-ship on the 13th of November; but I do not see that he as freight agent at Charlottetown, and an officer of the Crown, owed any such duty to the suppliant.

The judgment is that the suppliant is not entitled to any portion of the relief prayed for in his petition.

*Judgment accordingly.*

Solicitor for the suppliant: *W. A. Weeks.*

Solicitor for the respondent: *F. L. Hazard.*

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