

There should be no costs of the appeal. The appellant, as the result of the order which we affirm, may have lost by a slip the possibility of ever enforcing his judgment, if his remedy is barred by the Statute of Limitations or otherwise. If notice of the application for leave to issue execution had been given, the respondent would have had no answer to it, as it is not pretended that the judgment is not unsatisfied except as to \$20 which has been paid on account of it; and the respondent may properly be left to bear her own costs of the appeal.

Having come to this conclusion, we need not determine whether, as contended by the respondent's counsel, the judgment as it has been entered is a nullity; but, as at present advised, I do not think that the contention is well-founded.

NOVEMBER 13TH, 1914.

*WATSON v. CANADIAN PACIFIC R.W. CO.

Railway—Carriage of Goods — "Settlers' Effects" — Reduced Rate — Illegal Contract — Dominion Railway Act, R.S.C. 1906 ch. 37, secs. 77, 315, 317, 319, 320, 326, 341.

Appeal by the defendant company from the judgment of the County Court of the County of Kent.

The action was brought for \$457.37, being the difference between the amount specified by the defendant company's agent at Mission Junction, British Columbia, as payable on a car-load of settlers' effects shipped by the plaintiff there, and the amount demanded by the defendant company's agent at Chatham, and paid by the plaintiff under protest. The judgment was in favour of the plaintiff for the recovery of \$174.75 with costs.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, J.J.A.

W. N. Tilley and J. D. Spence, for the appellant company.

R. L. Brackin, for the plaintiff, the respondent.

The judgment of the Court was delivered by HODGINS, J.A. :—
Section 341 of the Railway Act of Canada seems to dispose of this case without reference to the question so fully argued. But for that section the respondent would have had difficulty in

*To be reported in the Ontario Law Reports.