

Q. B. Div.]

NOTES OF CANADIAN CASES.

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MACMILLAN v. G. T. R. Co.

Common carriers—Shipment of goods to a point beyond defendants' line—Negligence—Release of co-defendants.

The goods in question were shipped by plaintiff's agent in T. to the plaintiff at M., Man. After much delay some of the goods were delivered in a damaged condition by the C. P. R., whose line touches at M., and some were never delivered at all. Plaintiff brought his action for \$2,000 damages against the G. T. R., and subsequently the C. P. R. were made party defendants. The statement of claim charged the G. T. R. on the contract and the C. P. R. in tort. The G. T. R. set up a special contract, providing, amongst other things, for exemption from liability in case the goods were delayed, lost or damaged beyond their line, which ended at Fort G. Before trial plaintiff settled with the C. P. R. for \$650, and executed a release to them reserving his right to proceed against the G. T. R. for the balance, and notified the solicitor for the G. T. R. At the trial no reference was made to this release. The plaintiff's agent stated that the contract was a purely verbal one, and that he paid freight through to M., and received a receipt which he did not read, but forwarded it to the plaintiff. Defendants gave evidence that their contracts of shipment were always contained in a bill of lading (signed by the shipper and retained by the company), and in a corresponding shipping receipt (signed by the company and handed to the shipper). The goods in question were carried in a sealed car from T. to Fort G., and the car was still sealed when delivered to the next carriers *en route*. The learned Judge thought there was no evidence of negligence so far as the line of the G. T. R. extended, but it was not disputed that the goods had been damaged and lost by negligence before they reached the plaintiff.

The jury found that the contract was verbal. In answer to question put by the court, the foreman stated that the bill of lading was signed by one of the defendant's clerks, and that a receipt with the usual conditions endorsed was handed to plaintiff's agent at the time of shipment. Judgment was thereupon directed to be entered for defendants.

On motion by plaintiff to set aside this judg-

ment, and to have judgment entered for him for \$1,350, the balance claimed.

Held, that the contract, whether verbal or on one of the company's printed forms, was a through contract from T. to M., and that all corporations and persons employed *en route* were servants of the G. T. R. within the meaning of the Consol. R'y Act, 1879, sec. 25, subsec. 11, and that the loss having been admittedly occasioned by negligence, the defendants could not be relieved by any notice, condition, or declaration.

Held, also that notice of the value to the C. P. R. having been given by the G. T. R. before the trial the G. T. R. were not entitled to a new trial on the ground of surprise or the discovery of new evidence.

Held, also that the G. T. R. and C. P. R. were not joint contractors or joint tortfeasors, and that proof of the alleged release would not relieve the G. T. R. from liability.

OLMSTEAD v. ERRINGTON.

Division Court—Prohibition—Practice—Cost of application for writ—Entitling of affidavits—O. 7. A., secs. 23 and 25—Amendment—Marginal rule, 474.

Where a defendant, upon being sued in the First Division Court in the county of Middlesex, filed a notice disputing the jurisdiction and served a notice of motion returnable before a Judge in Chambers for an order directing the issue of a writ of prohibition to the said Division Court to prohibit the Judge thereof and the plaintiff from proceeding with the suit in that Division Court on the ground of want of jurisdiction in that Court to hear and determine the same, but did not entitle his notice of motion, nor the affidavit in support of the motion, in any division of the High Court of Justice.

Held, (affirming the order of O'CONNOR, J., in Chambers, granting the writ) not a fatal objection, but one which could and should be amended (under Marginal Rule 474).

Held, also that although the motion for prohibition came on to be heard, the plaintiff in the Division Court caused the plaint to be transferred to the proper Division Court in the