

*Quære.* Would the mortgage clause entitle the mortgagee to bring an action in his own name alone on the policy?

Appeal allowed with costs.

*Riddell, K.C., and Hoskin, for appellants. Aylesworth, K.C., and Bayly, K.C., for respondents.*

Ont.] GRAND TRUNK R. W. CO. v. FRANKEL. [Feb. 17.

*Railway company—Carriage of goods—Special instructions—Acceptance by consignee—Warehousemen—Negligence—Amendment.*

F. Bros., dealers in scrap iron at Toronto for some time prior to and after 1897, had sold iron to a Rolling Mills Co. at Sunnyside, in Toronto West. The G.T.R. had no station at Sunnyside, the nearest being at Swansea, a mile further west, but the Rolling Mills Co. had a siding capable of holding three or four cars. In 1897 F. Bros. instructed the G.T.R. Co. to deliver all cars addressed to their order at Swansea or Sunnyside to the Rolling Mills Co., and in October, 1899, they had a contract to sell certain quantities of different kinds of iron to the company, and shipped to them at various times up to January 2nd, 1900, five cars, one addressed to the company and the others to themselves at Sunnyside. On January 10th the company notified F. Bros. that previous shipments had contained iron not suitable for their business and not of the kind contracted for, and refused to accept more until a new arrangement was made, and about the middle of January they refused to accept part of the five cars, and the remainder before the end of January. On Feb. 4th the cars were placed on a siding to be out of the way and were there frozen in. On Feb. 9th F. Bros. were notified that the cars were there subject to their orders, and two days later F., one of the firm, went to Swansea and met the company's manager. They could not get at the cars where they were and F. arranged with the station agent to have them placed on the company's siding and he would have what the company would accept taken to the mills in teams. The cars could not be moved until the end of April, when the price of the iron had fallen, and F. Bros. would not accept them, but after considerable correspondence and negotiation they took them away in the following October and brought an action against the G.T.R. Co., founded on the failure to deliver the cars. It appeared that in previous shipments the cars were usually forwarded to the Rolling Mills on receipt of an order therefrom from the company, but sometimes they were sent without instructions, and on Feb. 3rd the station agent had written to F. Bros. that the cars were at Swansea and would be sent down to the Rolling Mills.

*Held,* affirming the judgment of the Court of Appeal, that the Rolling Mills Co. were consignees of all the cars and that they had the right to reject them at Swansea if not according to contract. Having exercised