

STREET, J.]

[NOV. 16.]

GRANT v. NORTHERN PACIFIC R.W. CO.

Railway companies—Railway carrying goods through other railways as agents—Loss of goods on agents' line—Liability of principal railway.

Action to recover the value of certain goods.

Evans, the purchaser of the goods in question in British Columbia, having the right to name the mode of transit, arranged with Blackwood, the defendants' agent there, that it should be forwarded by the Grand Trunk Railway and the Chicago & North-Western R.W. Co. to the defendants' care in St. Paul. The order to this effect having been forwarded by Blackwood to Belcher, the defendants' agent in Toronto, was by him forwarded to the plaintiffs with a request that they would ship the goods marked in the prescribed manner; and the plaintiffs did as directed.

Held, that the defendants must be taken to have received the goods by their agents, the Grand Trunk R.W. Co., upon a contract to carry and deliver them safely to the order of the consignee at Victoria, British Columbia. This contract was broken by their delivering the goods to a person other than the consignee, and plaintiffs having thus lost the value of the goods are clearly entitled to recover.

Wallace Nesbitt and Thos. Wells for the plaintiffs.

Bigelow, Q.C., for the defendants.

Chancery Division.

STREET, J.]

[Sept. 24.]

NASON v. ARMSTRONG.

Vendor and purchaser—Will—Devise—Estate—Condition of sale—Good title—Time within which to raise objection to title—Costs.

A testatrix by her will devised one-half of a lot to her daughter A.P., and the other half to her daughter B.P., and then provided: "And be it understood that if either of my daughters die without lawful issue, the part and portion of the deceased shall revert to the surviving daughter; and in the case of both dying without issue, then I authorize my brother (naming him), the priest of St. Paul's parish, and my

executor, to subdivide the estate amongst my relatives as they shall deem right and equitable in their prudence, justice, and charity."

In an action by a purchaser from the defendants, who claimed through B.P. for specific performance of an agreement for purchase, or, in case they could not make a good title, for a return of the purchase money, it was

Held, that B.P. took a defeasible estate in fee, with a devise over to A.P. in case B.P. should die leaving no issue at her death, and, as B.P. was still alive, it was impossible to say that a conveyance from her passed a good title.

Little v. Billings, 27 Gr. 353, and *Ashbridge v. Ashbridge*, 22 O.R. 146, referred to.

Held, also, that notwithstanding a condition in the agreement that "The vendee to examine the title at his own expense, and to have ten days . . . for that purpose, and shall be deemed to have waived all objections to title not raised within that time," the vendee is entitled to a good title, and at any time before conveyance is entitled to show that the vendor cannot make any title to the land which the vendee has agreed to purchase.

Held, also, under the circumstances of this case, that the plaintiff had not by his conduct and delay waived his right to object to the title; but as he had not raised the objection in the proper manner and at the proper time, he should get no costs.

E. D. Armour, Q.C., for the plaintiff.

Moss, Q.C., and *J. A. Macdonald* for the defendants.

BOYD, C.]

[Sept. 26.]

RE EDDIE.

Will—Devise—Legacy charged—Sale by executors in order to pay the legacy.

A testator devised to his daughter a lot of land charged with a legacy. The daughter predeceased the testator, leaving two children, to whom the lot descended.

On an application by the executors at the instance of the official guardian, it was

Held, that it was the duty of the executors to sell the land and pay the legacy.

Middleton for the executor.

J. Hoskin, Q.C., Official Guardian, for the infants.