

that his statement was untrue, his evidence was properly admitted.

Appeal dismissed with costs.

Henry, Q.C., and Harrington, Q.C., for appellant.

J. W. Longley, Q.C., for respondent.

Man.]

[Dec. 14, 1888.

CAMERON V. TAIT.

Principal and agent—Authority of agent—Excess of ratification by principal—Agent for two principals—Contract by.

M., a machine broker at Winnipeg, was appointed, by authority in writing, agent for P. T. & Co., manufacturers of mill machinery at Port Perry, to sell machinery in certain districts. M. was also agent for the D. Engine Co., manufacturers of steam engines and steam machinery at Toronto.

C. T. & Co., lumber manufacturers at Rat Portage, ordered from M. a saw mill and machinery complete, of a specified cutting capacity, for which they agreed to pay a fixed price. M. agreed by letter to furnish such mill and machinery at the price named. M. procured the mill and machinery from P. T. & Co., and the power for working it from the D. Engine Co. and delivered them to C. & M. at Rat Portage. It proved, however, that the mill would not cut the quantity of lumber agreed on, and P., T. & Co. undertook to put in new machinery, but on C. & M. refusing to make certain payments before delivery of the same, it was not put in. In an action by C. & M. against P., T. & Co. for breach of warranty:

Held, affirming the judgment of the court below, RITCHIE, C.J., and FOURNIER, J., dissenting, that the contract by M for the sale of both the mill and power as a single transaction and for a lump sum was in excess of his authority as agent of P., T. & Co., and the contract was, therefore, one with M. personally, and the judgment of nonsuit in the court below was right.

Held also, that unless both P., T. & Co. and the D. Engine Co. joined in adopting the contract and in warranting each other's goods, as well as their own, there could be no ratification of the sale by either.

Appeal dismissed with costs.

Aikins, Culver and Hamilton, for appellants.

J. W. E. Darby, for respondents.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

COURT OF APPEAL.

[June 29, 1888.

FOLLET V. TORONTO STREET RAILWAY CO.

Negligence—Damaged by street car—Contributory negligence—Accident by carelessness of plaintiff.

While a car of the defendant's in charge of another servant of the company, the driver having temporarily gone to the rear of the car, was proceeding westerly at a slow rate along a street in the city of T., on which they had the right of way, the plaintiff, whose carriage was waiting at the kerb stone, without observing the near approach of the car, got into and drove her carriage for a short distance in the same direction as the car, when she suddenly turned north intending to cross, but in such a close proximity to the car, that, but for the prompt action of the driver in charge in turning his horse off the track, his horse would have collided with the plaintiff's carriage; as it was, notwithstanding the break was applied to the car the whiffletree struck the wheel of the carriage, when it was upset, and the plaintiff thrown to the ground and her leg was fractured.

In an action for damages, the jury found in favour of the plaintiff, which verdict the Divisional Court refused to disturb. On appeal, this Court [OSLER J. A., dissenting] being of opinion that there was no evidence of negligence on the part of the defendants, reversed the judgment of the C. P. D., and dismissed the action, with costs.

Osler, Q.C., and Shepley, for the appellants.

Robinson, Q.C., and Fullerton, for the respondents.

[Nov. 14, 1888.

SHEARD V. LAIRD.

Deed obtained by threats of legal proceedings—Undue influence.

The defendant had become liable as accommodation indorser for the husband of one of the plaintiffs, who, with his wife, became makers of a joint note to defendant as security, and which it was agreed should be paid out of the proceeds of certain lands that had been previously conveyed by the husband to his wife. Instead of doing so, however, the