

The learned Judge expressed no opinion as to whether the issues raised in the two actions were the same.

So far as he had power to direct, the result of this motion should not fetter the action of the trial Judge, if this action should come on for trial.

For the present no order would be made, but subject to this qualification, that, if the defendants, in order to clear the way for an appeal, desired it, the motion would be dismissed.

---

FRIEDMAN v. CANADIAN PACIFIC R.W. CO.—LENNOX, J.—JAN. 12.

*Railway—Carriage of Goods—Contract—Delivery without Payment or Indemnity—Recovery of Damages by Shipper against Carriers—Person to whom Goods Delivered Made Liable over to Carriers—Third Parties—Costs.*—Action to recover from the defendant railway company the value of two car-loads of lumber shipped over the company's line from Renfrew to Oshawa about the 25th or 26th July, 1919. The defendant company served a third party notice upon the Canadian Stewart Company Limited, claiming indemnity or relief over. The third parties opposed the claim. The action and third party claim were tried without a jury at Ottawa. LENNOX, J., in a written judgment, said that the plaintiff sold the lumber to one W. J. Morrison. As arranged with Morrison, the plaintiff consigned the lumber to the agent of the Bank of Nova Scotia at Oshawa, and through the bank drew upon Morrison for payment at sight. The bills of lading, signed by the carriers and shipper, set out that the goods were consigned to the order of the Bank of Nova Scotia at Oshawa—"notify Canadian Stewart Company"—and "the surrender of this original order and bill of lading, properly endorsed, shall be required before the delivery of the goods." The two car-loads in question here, contrary to the contract entered into by the carriers with the plaintiff, were, by mistake of the yardmaster, delivered to the third parties without payment of the sight draft or indemnity. After discussing the facts, the learned Judge found them in favour of the plaintiff, and directed that judgment should be entered for the plaintiff against the defendant company for \$642.29 with County Court costs (and no order to prevent a set-off), and judgment for the defendant company against the third parties for the amount recovered by the plaintiff against the defendant company for damages and costs (after deducting costs set off as aforesaid) together with the defendant company's costs of defence and third party proceedings, to be taxed according to the tariff of the Supreme Court. J. J. O'Meara, for the plaintiff. W. L. Scott, for the defendants. A. W. Langmuir, for the third parties.