

“been received at those stations, will be forwarded to their destinations by public carriers or otherwise as opportunity may offer, without any claim for delay against the company for want of opportunity to forward them, or they may, at the discretion of the company, be suffered to remain on the company's premises or be placed in shed or warehouse (if there be such convenience for receiving the same) pending communications with the consignees, at the risk of the owners as to damage thereto from any cause whatsoever. But the delivery of the goods by the company will be considered complete, and all responsibility of said company shall cease, when such other carriers shall have received notice that said company is prepared to deliver to them the said goods for further conveyance, and it is expressly declared and agreed that the said G. T. R. Co. shall not be responsible for any loss, mis-delivery, damage or detention that may happen to goods sent by them, if such loss, mis-delivery, damage or detention occur after the said goods arrive at said stations or places on their line nearest to the points or places which they are consigned to, or beyond their said limits.”

*Held*, on the authority of *Bristol & Exeter Ry. Co. v. Collins*, (17 H. L. C. 194) that this clause could not operate to restrict the liability of the G. T. R. to loss or damage occurring on their own line, but that the contract by the G. T. R. Co. must be held to be for the carriage of the goods over the whole route so far as it could be performed by railway, and the other companies over whose lines the goods were to be carried to be the mere agents of the G. T. R. Co., for the purpose of such carriage.

Sect. 104 of the Railway Act, R. S. C. c. 109, gives a right of action against a railway company for breach of certain regulations and for failure to convey and deliver goods, etc., and declares that from such action “the company shall not be relieved by any notice, condition, or declaration, if the damage arises from any negligence or omission of the company or of its servants.”

*Held*, that the plain construction of the

whole section is that this prohibition only affects railway companies in respect to their duties and obligations as common carriers, and the G. T. R. Co. could, therefore, limit their liability, either as carriers or otherwise, in respect of goods to be carried after leaving their own line, the contract for such carriage being one they might have declined altogether.—*Vogel v. The Grand Trunk Railway Co.*, 11 Can., S.C.R. 612, distinguished.

The evidence showed that the loss and damage to the goods in this case occurred not in transit but after their arrival at the station named as the place of delivery and while in possession of another company.

*Held*, reversing the judgment of the Court below, (15 Ont. App. R. 14), Fournier and Gwynne, JJ., dissenting, that the above clause put an end to the liability of the G.T.R. Co., after such arrival, and the company having possession of them held them thenceforth as warehousemen and bailees for the consignees.

*Held*, also, with the like dissent, that the G. T. R. Co. were relieved from liability by reason of the consignees failing to give notice of their claim for loss within thirty-six hours after the arrival of the goods as provided in another condition of the bill of lading.

*Quere*, under the present law is a release to, or acceptance of satisfaction from, one of several joint tortfeasors a bar to an action against the others?

Appeal allowed.

*McCarthy, Q. C.*, and *Nesbitt*, for the appellants.

*Christopher Robinson, Q. C.*, and *Gait*, for the respondent.

OTTAWA, April 7, 1889.

Ontario.]

WARNER V. MURRAY.

*Insolvent estate—Claim by wife of Insolvent—Money given to husband—Loan or gift—Questions of fact—Finding of Court below.*

M. having assigned his property to trustees for the benefit of his creditors, his wife preferred a claim against the estate for money lent to M. and used in his business. The assignee refused to acknowledge the claim, contending that it was not a loan but a gift