

on which the mechanic's work was done, applied by petition in the Chancery Division to have such judgment set aside as acted upon his title. On this petition an order was made allowing C. to come in and defend the action for lien on terms, which not being complied with, the petition was dismissed, and the judgment dismissing it was affirmed by the Divisional Court and the Court of Appeal. On appeal to the Supreme Court of Canada,

Held, that the judgment appealed from was not a final judgment within the meaning of sec. 24 (a) of the S. & E. C. Act, or if it was, it was a matter in the judicial discretion of the Court, from which by sec. 27 no appeal lies to this Court.

Appeal quashed without costs.

S. R. Clarke, appellant in person.

W. Cassels, Q.C., for the respondent.

GRAND TRUNK RAILWAY CO. v. McMILLAN.

[March 18.

Railway company—Carriage of goods—Bill of lading—Carriage over several lines—Negligence—Exemption from liability for—R.S.C., c. 109, s. 104—Construction of—Joint tortfeasors—Action against—Bar to—Discharge by one.

M. shipped certain goods by the Grand Trunk Railway from Toronto to Portage La Prairie, and the bill of lading contained the following condition :

"10. All goods addressed to the consignees at points beyond the places at which the company has stations, and respecting which no directions to the contrary shall have 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 Grand Trunk Railway Company shall not be responsible for any loss, mis-delivery, damage or detention that may happen to goods so 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 Railway Co. v. Collins* (7 H.L.C. 194), that this clause could not operate to restrict the liability of the Grand Trunk Railway to loss or damage occurring on their own line, but that the contract by the Grand Trunk Railway 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 Grand Trunk Railway Co. for the purpose of such carriage.

Sec. 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 Grand Trunk Railway Company 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 Company*, 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.