

Per BURTON and MACLENNAN, J.J.A.: The condition was sufficiently wide to bind the vendee, in the absence of objection within the limited time, to accept such title as the vendor might be able to give.

A devise to two persons of separate lots of land, with a proviso that if either devisee should die without lawful issue the part and portion of the deceased should revert to the surviving devisee, and with the further proviso that in case both devisees should die without issue the devised lands should be divided by certain named persons, as they should deem right and equitable, among the relatives of the testatrix, confers upon each devisee only a defeasible fee simple.

Judgment of STREET, J., 22 O.R. 542, affirmed.

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

Armour, Q.C., *Marsh*, Q.C., *G. G. S. Lindsey*, and *G. Y. Smith* for the respondents.

From C.P.D.]

[April 4.

ROBERTSON v. GRAND TRUNK RAILWAY CO.

Railway—Conditions—Negligence—Shipping contract—Horse—51 Vict., c. 29, s. 246 (D.)—Damages—New trial.

The plaintiff delivered to the defendants a racehorse for transport over part of their line of railway, nothing being said as to its value, and at the time signed a shipping contract which stated that the horse was received for transport at a special named rate, and that in consideration of this special rate the defendants should not be liable for any loss unless caused by collision, and then only to the extent of \$100. The horse was killed in a collision caused by the defendants' negligence, and the jury found that its value was \$5,000.

Held, per HAGARTY, C.J.O., and OSLER, J.A., that the special limitation having been entered into in good faith on the declared value of \$100, and not for the purpose of evading liability, was valid, and not in contravention of 51 Vict., c. 29, s. 246 (D.).

Per BOYD, C.: That under that section the limitation of liability for damages resulting from negligence was invalid, but that a new trial should be ordered because of the allowance of excessive damages.

Per MACLENNAN, J.A.: That a limitation of liability against damages caused by negligence would be valid, as being, in effect, a pre-ascertainment of the amount of damages; but that the particular shipping contract in question, having regard to the freight classification made under s. 226 of the Act, did not effect such a limitation, and that a new trial should be ordered because of the allowance of excessive damages. *Vogel v. Grand Trunk R.W. Co.*, 2 O.R. 197; 10 A.R. 162; 11 S.C.R. 612, considered.

In the result, the judgment of the Common Pleas Division, 24 O.R. 75, was affirmed.

H. H. Collier for the appellant.

Osler, Q.C., for the respondents.