

"The next step of the company appealing to the Superior Court, was to sue out a writ commanding the present appellant, to appear and an attached petition or declaration and demand. In this demand the company, after mentioning the award on grounds of fact, and of law, proceeded in following paragraphs to set out its grounds. Then, by its conclusion, it prayed that the proceedings evidence and papers be brought before the Superior Court, that the award be set aside and the court fix the proper indemnity.

"Most of the grounds which the company sets forth are simply grounds of appeal. The wording of them reminds one of the familiar verbiage of the "griefs d'appel" for many years in use in ordinary civil appeals to this court.

"There are certain grounds, however, which would find an appropriate place in an action to set aside the award. Such are the counts wherein it is alleged that the award is upon its face illegal and null, that the award which purports to be set out in the copy of the notarial deed is not the real award and, that the majority of the arbitration dealt with matters which were beyond their powers.

"I consider, however, that all these grounds are to be regarded as being invoked under the principal and covering allegation of the company to the effect that it desires to appeal on grounds of fact, and of law. In this view, the Superior Court judgment would not be *res judicata* against a later action to set aside the award, and I think that that is a proper case to apply.

"Upon the first question, I would, therefore, say that the proceeding in the Superior Court was an appeal simply and did not amount to an action to set aside the award.

"Upon the second question, it has been argued that there is nothing which takes this case out of the rule that there is an appeal to this court from any final judgment of the Superior Court; and that there is such right of appeal "unless when otherwise provided by statute." Art. 34 C. P.