

The nonsuit should be set aside and the case allowed to proceed to trial: cost in the cause to the plaintiff.

Carscallen & Cahill, Hamilton, solicitors for plaintiff.

Crerar & Crerar, Hamilton, solicitors for defendants.

MACLENNAN, J.A.

MAY 5TH, 1902.

C. A.—CHAMBERS.

FRANKEL v. G. T. R. CO.

Appeal—To Supreme Court of Canada—Subject matter in Controversy \$1,000—Counterclaim for \$1,223.

Motion by defendants for the allowance of the bond on their appeal from the judgment of the Court, *ante* p. 254.

H. E. Rose, for defendants.

James Baird, for plaintiffs.

MACLENNAN, J.A.—The plaintiffs have no objection to the bond, but object that no appeal lies by reason of the Act of the Dominion 60 & 61 Vict. ch. 34, sec. 1, which enacts that no appeal shall lie from any judgment of this Court to the Supreme Court of Canada except in certain cases, unless special leave of this Court or of the Supreme Court is obtained, which has not been done.

Mr. Baird contends that the case is not within any of the clauses making an appeal competent; while Mr. Rose says it is within clauses (c) and (f), inasmuch as the matter in controversy on the appeal exceeds the sum or value of \$1,000 as explained in the latter of these two clauses.

The plaintiffs claimed \$1,500 damages for delay in delivery of a large quantity of iron carried by them for the plaintiffs, the damages being caused by a fall in the price of the iron between the time when it ought to have been delivered and the time of its actual delivery.

The defendants, besides denying the charge of non-delivery in due time, counterclaimed for demurrage for the use of their cars on which the iron was loaded for several months, and for this they claimed \$1,223.

The trial Judge gave judgment for the plaintiffs for \$1,000, estimating the damage upon the fall of price between the time when delivery should have been made and the time of actual delivery, and he dismissed the counterclaim.

The defendants appeal to this Court, which allowed the appeal by limiting the damages to the fall in price during