

CHARLES A. E. SHAW (PLAINTIFF).....APPELLANT ;

1889

AND

*Dec. 9.

THE CANADIAN PACIFIC RAIL- }
WAY COMPANY (DEFENDANTS). } RESPONDENTS.ON APPEAL FROM THE COURT OF QUEEN'S BENCH,
MANITOBA.*Appeal—Jurisdiction—Final judgment—Judgment on demurrer to replication to plea.*

The judgment of a provincial court allowing a demurrer to the plaintiff's replication to one of several pleas by the defendants, which does not operate to put an end to the whole or any part of the action or defence, is not a final judgment from which an appeal will lie to the Supreme Court of Canada.

APPEAL from a decision of the Court of Queen's Bench, Manitoba (1) affirming the judgment of Mr. Justice Killam, by which a demurrer to the plaintiff's replication to one of the pleas was allowed.

The action in this case was for an alleged breach of contract by the railway company to carry the plaintiff's goods safely over a portion of their line and deliver them to the plaintiff. The defendants pleaded a number of pleas, one being that they undertook to carry the goods under a special contract by the terms of which their liability was to be limited to wearing apparel not exceeding in value \$100; that they were under no liability as to the goods which were not wearing apparel; and they paid into court \$100 as all they were chargeable with under such special contract.

The plaintiff made two replications to this plea, the second of which was that the special contract did not

*PRESENT :—Sir W. J. Ritchie C.J., and Strong, Taschereau, Gwynne and Patterson JJ.

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relieve the company from liability as the alleged loss and damage arose from the negligence of the defendants within the meaning of the Consolidated Railway Act of 1879 sec. 25, sub-sec. 4.

The defendants demurred to this replication on the grounds, among others, that it was a departure from the declaration which was in contract while the replication was in tort, and that the statute did not prevent them showing the terms of the special contract. The demurrer was argued before Mr. Justice Killam and allowed, and on appeal to the full court his judgment was affirmed. The plaintiff then appealed to the Supreme Court of Canada. The respondents, in their factum, took the objection that the judgment appealed from was not a final judgment from which an appeal would lie to the Supreme Court.

*McCarthy* Q.C. for the appellant referred, on the question of jurisdiction, to the cases of the *Bank of British North America v. Walker* (1) and *Reid v. Ramsay* (2).

*A. Ferguson* for the respondents, was not called upon. By the court. The appeal must be quashed.

*Appeal quashed with costs.*

Solicitors for Appellant: *Ewart, Fisher & Wilson.*

Solicitors for Respondent: *Aikins, Culver & Co.*

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(1) Cassels's Dig. 244.

(2) Cassels's Dig. 238.