

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Petition for Leave
to Appeal of The Canada Central Railway
Company v. Murray et al., from the Supreme
Court of Canada ; delivered, June 30th, 1883.*

Present :

LORD WATSON.

SIR BARNES PEACOCK.

SIR ROBERT P. COLLIER.

SIR RICHARD COUCH.

SIR ARTHUR HOBHOUSE.

THEIR Lordships are of opinion that this application ought to be refused.

The case made by the Petitioners, the Railway Company, is that they were not liable to the Plaintiff Thomas Murray as having employed him to make certain fencing along the line. They allege that that contract was made with a gentleman of the name of Foster, who was not only a servant of the Company, but a contractor with the Company, dealing with them as an independent contractor. The Judge put the question to the jury, whether they were satisfied that the Plaintiff contracted in the belief that he was dealing with the Company, and further put the question to them whether the Company had fostered that belief and dealt with the Plaintiff on the footing that they had contracted with him ; and, in the event of the jury coming in point of fact to the conclusion that both those questions should be answered in the affirmative, he directed them that a verdict should follow for the Plaintiff. The jury found for the Plaintiff. The questions that seem to have been discussed

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in the Courts below may be said to be two: first, whether there was evidence to go to the jury at all making the Petitioners parties to the contract by adoption or recognition; and in the second place, whether the evidence was sufficient to establish the fact that they had recognised or adopted the contract which was admittedly made by Foster with the Plaintiff. There has been a difference of opinion in the Court below. The majority of the Judges were of opinion that the verdict was warranted by the evidence before the jury, and the course taken by the Judge was consequently not only justifiable, but right. The view taken by the minority of the Court was that there was no evidence to go to the jury upon that point, at least no evidence of a satisfactory description, and that therefore the verdict of the jury ought to be set aside, and judgment entered for the Defendants.

Now the questions so raised appear to their Lordships to involve no issue except an issue of fact. The question before the Court was whether there was evidence in point of fact, and what was the effect of that evidence. That the Judges below have differed upon a question of fact in regard to an ordinary contract of employment does not seem to be any reason for permitting an appeal, having regard to the terms of the Statute which now regulates these appeals.

Their Lordships are also desirous in this case to lay down the rule that they will in future expect parties who are petitioning for leave to bring an appeal before this Board to state succinctly, but fully, in their Petition, the grounds upon which they make that demand. They certainly expect that parties will confine themselves in future to the Petition, and will not wander into extraneous matter, such as the record and proceedings, over which this Board, until an appeal is permitted and the papers are

sent to England by the proper authorities, have no control, and which they cannot accept on an ex parte statement, which an application of this kind is.

Their Lordships will humbly report to Her Majesty that this Petition ought to be dismissed.

