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 v.  
 LONDON  
 AND  
 NORTH  
 WESTERN  
 RAILWAY CO.

special Acts) may not be common carriers of coal; see *Johnson v. Midland Ry. Co.* (1); yet, as they do carry coal for Mr. Perkins to Lubenham, they may be bound under proper conditions to carry coal for other dealers to that station, and to give reasonable facilities for unloading it there. But that was not the substance of the demand made by the present applicants upon the company. The substance of the demand made upon the company, and of the application to this Court, was, that the company should allot a portion of the land let to Mr. Perkins to the applicants, to be used by them as a depôt for the stacking and sale of their coals. We think, for the reasons above stated, that this demand is beyond the scope of the Railway and Canal Traffic Act, and consequently that the rule ought to be discharged.

*No rule.*

Attorneys for plaintiffs: *I. H. Douglas, for Douglas, Market Harborough.*

Attorney for defendants: *J. Blenkinsopp.*

June 16.

PARK GATE IRON COMPANY, LIMITED, APPELLANTS; COATES,  
 RESPONDENT.

*County Court Appeal—Jurisdiction—Notice of Appeal—Security for Costs—Waiver—County Court Act, 1850 (13 & 14 Vict. c. 61), ss. 14, 15, & 16—County Court Rules, 1867, r. 188.*

The provisions of 13 & 14 Vict. c. 61, s. 14, requiring the party appealing from the decision of a county court judge to give a notice of appeal and security for costs within ten days, are not conditions precedent to the jurisdiction of the court to hear the appeal, and they may therefore be waived by the respondent.

RULE calling on the appellants to shew cause why the case on appeal should not be struck out of the special paper, on the ground that no notice of appeal or security for costs had been given, as required by the County Court Act, 13 & 14 Vict. c. 61, s. 14. (2)

It appeared from the affidavits that the respondent had brought

(1) 4 Ex. 367; 18 L. J. (Ex.) 366.

(2) 13 & 14 Vict. c. 61, s. 14:—enacts "That if either party in any cause, of the amount to which jurisdiction is given to the county courts by this Act, shall be dissatisfied with the

determination or direction of the said court in point of law, or upon the admission or rejection of any evidence, such party may appeal from the same to any of the superior courts of common law at Westminster, . . . . pro-

an action against the appellants for injury sustained through the appellants' negligence. The action was sent down to the county court at Rotherham for trial, and the respondent obtained a verdict. The appellants at the time stated to the respondent their intention to appeal, and the case on appeal was accordingly drawn up and seen by both parties. The respondent was fully aware of the steps the appellants were taking, and that no written notice of appeal had been given (1), and also that no security had been given, but he took no objection to the want of such written notice or security, and waived his right to insist on the performance of these statutable requirements, as far as it was possible for him to do so. Security was ultimately given by the appellants, but not within ten days of the date of the decision.

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*Quain, Q.C.*, shewed cause. The only question is whether the provisions of the County Court Act, 1850 (13 & 14 Vict. c. 61, s. 14), respecting the giving of security and notice of appeal can be waived by the respondent. They are entirely for his benefit,

vided that such party shall, within ten days after such determination or direction, give notice of such appeal to the other party, or his attorney, and also give security, to be approved by the clerk of the court, for the costs of the appeal, whatever be the event of the appeal, and for the amount of the judgment if he be the defendant and the appeal be dismissed; provided, nevertheless, that such security, so far as regards the amount of the judgment, shall not be required in any case where the judge of the county court shall have ordered the party appealing to pay the amount of such judgment into the hands of the clerk of the county court in which such action shall have been tried, and the same shall have been paid accordingly. . . ."

S. 15:—"That such appeal shall be in the form of a case agreed on by both parties, or their attorneys, and if they cannot agree, the judge of the county court, upon being appealed to

by them, or their attorneys, shall settle the case and sign it; and such case shall be transmitted by the appellant to the rule department of the master's office of the court in which the appeal is to be brought."

S. 16:—"That no judgment order or determination given or made by any judge of a county court, nor any cause or matter brought before him, or pending in his court, shall be removed by appeal, motion, writ of error, certiorari, or otherwise, into any other court whatever, save and except in the manner and according to the provisions hereinbefore mentioned."

(1) By r. 188 of the County Court Rules, 1867, "the notice of appeal shall be in writing, and shall state the grounds on which the party appeals, and shall be signed by the appellant, his attorney or agent, and such notice shall be sent to the registrar as well as to the successful party by post or otherwise."

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and it is a general rule that where a duty is imposed by statute for the benefit of any particular person, he can waive it. This was held in *Graham v. Ingleby* (1), and other cases will be found collected in Broom's Legal Maxims, 4th ed. pp. 670—677. The case of *Morgan v. Edwards* (2) will be relied on on the other side, but that is distinguishable because it was a criminal case, and the public were interested. The jurisdiction to hear the appeal is given by the general words of the statute, and these provisions are merely matters rendered obligatory upon the appellants for the benefit of the respondent, and do not affect the jurisdiction of this Court.

*Field, Q.C.*, and *Kemplay*, in support of the rule. The provisions of the Act are imperative, and cannot be waived; any matter depending upon contract or any matter of procedure may be waived, but not a condition upon which the jurisdiction of the Court depends. This case cannot be distinguished from *Morgan v. Edwards* (2); which was decided on the words of 20 & 21 Vict. c. 43, s. 2. The case was not strictly a criminal case, and the Court expressly founded their decision upon the fact that the objection went to the jurisdiction, and held that it could not, therefore, be waived by conduct similar to that of the respondent in this case. *Peacock v. The Queen* (3) is another case to the same effect, and is cited and followed in *Morgan v. Edwards*. (2) The words of s. 16 of 13 & 14 Vict. c. 61, are exceedingly strong, and amount to a prohibition to the Court to hear this case. In *Stone v. Dean* (4), which was a case on this very Act, the Court held they had no jurisdiction to hear the appeal because security had not been given within the required time; there was, however, no question of waiver, and the decision would have been the same if the provision with respect to security had been treated as a matter of procedure. *Graham v. Ingleby* (1) and *Furnival v. Stringer* (5) are distinguishable, for there was no question of jurisdiction in those cases.

BOVILL, C.J. I am clearly of opinion that if the objections taken by the respondent to our hearing the appeal can be waived,

(1) 1 Ex. 651.

(C. P.) 224.

(2) 5 H. & N. 415; 29 L. J. (M. C.) 108.

(4) E. B. & E. 504; 27 L. J. (Q.B.) 319.

(3) 4 C. B. (N. S.) 264; 27 L. J.

(5) 1 Bing. N. C. 68

they have been waived. It must be taken that the respondent was aware that no written notice or security had been given as required by the Act, and that, with that knowledge, he proceeded, in concert with the appellants, in the settlement of the special case. It comes to a question, therefore, on the construction of the Act of Parliament, whether the performance of the matters required by s. 14 can be waived by the respondent. By the 14th section it is enacted :—[His Lordship here read s. 14.] Then the 16th section enacts :—[His Lordship read s. 16.] Section 16 is, no doubt, a prohibitory enactment; but it seems to me that the clause is satisfied by limiting it to the provision of s. 15, that the appeal shall be in the form of a special case.

The provisions of s. 14, that there shall be notice of appeal and security, seem to me more in the nature of procedure and practice, and to have been intended for the benefit of the respondent. It is not a matter with which the public are concerned. If this be so, it falls within the rule that either party may waive provisions which are for his own benefit, and it comes within the case of *Graham v. Ingleby*. (1) We have been pressed with the cases which have been decided on 20 & 21 Vict. c. 43, and, no doubt, in them it was held that the provisions of the Act not having been complied with, the Court had no jurisdiction. In *Peacock v. The Queen* (2) the procedure was of a criminal nature, where no one for that reason had a right to waive any irregularity, and in *Morgan v. Edwards* (3) the parties really interested in the provisions of the Act being complied with were the justices, and the parties, therefore, were not competent to dispense with their fulfilment. Consistently with those cases it seems to me that in this case, where the provisions of the Act are entirely for the benefit of the respondent, we may hold him able to dispense with their fulfilment.

KEATING, J. I entirely agree that if the objections can be waived they have been waived; the doubt I have entertained, and which I still strongly retain, is, how far s. 16 can be read, as suggested

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(2) 4 C. B. (N.S.) 264; 27 L. J. (C.P.) 108.

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by my Lord, as confined to s. 15. The words here are very strong ; the Court can have no right to hear the appeal except under the Act, and the Act seems to provide that the county court judge shall finally dispose of the case, except in certain cases which are specially provided. No doubt, in one sense the provisions are for the benefit of the respondent, but still the jurisdiction of the Court depends entirely on s. 14, which provides that these conditions shall be fulfilled in the case of all appeals ; and then come the prohibitory words of s. 16, which seem to me to be peculiarly strong ; no judgment is to be removed by appeal, "except in the manner," and, which is still stronger, "according to the provisions" thereinbefore mentioned. It has been argued, it seems to me with great force, that these provisions must include the giving due notice of appeal and security within the appointed time ; however, the rest of the Court hold strongly the contrary opinion, and I am not desirous of dissenting, notwithstanding the strong doubt I entertain on the subject.

MONTAGUE SMITH, J. I think this rule should be discharged. The objection taken is that no proper notice of appeal or security was given within ten days, as required by the Act. Now, if that objection goes to the jurisdiction of the Court, I quite agree that it cannot be waived ; but if it be a condition inserted entirely for the respondent's security it may be waived, and, if it can be waived, there is undoubtedly sufficient evidence that the respondent has waived it in this case. I think we give a reasonable construction to the 14th, 15th, and 16th sections by holding that the provisions respecting notice and security are entirely for the respondent's benefit, in which no public interests are involved, and which, according to the ordinary rule, he may therefore waive ; the words of s. 16 no doubt are strong, but they may well relate to the mode of stating the case and sending it up, and those are matters in which the Courts are interested, as otherwise much disorder would be introduced ; the provisions of s. 14 concern solely the interests of the respondent, and the words of s. 16, though they are negative words, may be read, as far as they affect the jurisdiction of the Court, as confined to matters which relate to jurisdiction. The cases on 20 & 21 Vict. c. 43 at first sight appear inconsistent with

this view; but they differ from the present case in this respect: that they relate to a procedure which is in the nature of a criminal procedure, and it is a rule in criminal matters that the parties cannot waive what the law directs. I observe, too, that in *Morgan v. Edwards* (1), although the Court seem to think that the objection goes to the jurisdiction, they qualify their judgment by throwing out that, in some circumstances, cases stated without notice having been given might be heard. However, it is not necessary to discuss that question now, for that case is distinguishable on the ground I have mentioned; and we do no violence to it in holding that the requirements of the present Act respecting notice and security may be waived by the respondent.

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BRETT, J. It is clear that the respondent waived, if he could do so, and intended to waive a want of notice in writing and security. If they are conditions precedent to the jurisdiction of the Court to hear the appeal, it is clear that they cannot be waived; but if they are mere matters of procedure, and enacted entirely for the benefit of the respondent, this being a civil matter, they might be waived. In a matter of jurisdiction, I think there is no difference between civil and criminal matters; but where the question of jurisdiction does not arise, *Graham v. Ingleby* (2) shews that in civil cases such provisions may be waived. The question, therefore, is, what is the true construction of the Act, and I think we may properly hold that the jurisdiction of the Court depends on whether the amount in dispute is such as is within the jurisdiction of the county court, and on whether the form of a special case has been adopted, and that then, for the protection of the respondent, the appellant must give a notice of appeal and security. The only doubt I had was as to the negative words of s. 16; however, I think they may be fairly construed as applying only to the matters which give jurisdiction to the Court, and that they do not refer to the matters of procedure which are enacted for the benefit of the respondent.

*Rule discharged.*

Attorneys for appellants: *Learoyd & Learoyd, for W. Whitfield of Rotherham.*

Attorneys for respondent: *Rickards & Walker.*

(1) 5 H. & N. 415; 23 L. J. (M. C.) 108.

(2) 1 Ex. 651.