

On the evidence the court also held that it was proved that the fish were in good condition when shipped by the plaintiffs; that under s. 33, the defendants took the risk of any deterioration necessarily incident to the transit from Nova Scotia to Winnipeg by freight; that the defendants had been so careless in handling the goods after their arrival in Winnipeg that the damages subsequently resulting should be attributed to their own negligence, and that, therefore, there should be no deduction from the purchase price.

*Held*, also, following Benjamin on Sales, 5th ed., at pp. 355, 639, and *Badische v. Basle* (1898) A.C. at p. 207, that, although delivery to a carrier is prima facie an appropriation of the goods, yet the seller may contract to deliver them to the buyer at their destination, in which case the property does not pass till such delivery.

Appeal allowed with costs, and judgment ordered to be entered for plaintiffs for the amount of their claim and costs of suit.

*Galt*, for plaintiffs. *Fullerton and Foley*, for defendants.

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Full Court.] EMPEROR OF RUSSIA v. PROSKOURIAKOFF. [June 8.

*Jurisdiction—Service of statement of claim out of jurisdiction—Substitutional service within the jurisdiction—Non-resident foreigner—Writ of attachment against goods of.*

Appeals from decisions of MATHERS, J., noted ante, pages 359 and 362, heard separately but disposed of by judgments covering both appeals.

On the hearing of the appeals, powers of attorney, executed at Chicago, U.S., 14 days before the filing of the statement of claim, in which the defendants described themselves as of Winnipeg, Canada, were for the first time put in. These instruments authorized one Popoff of Winnipeg to take charge of and deal with the defendant's property there.

HOWELL, C.J.A., and PERDUE, J.A., affirmed, but RICHARDS and PHIPPEN, J.J.A., dissented from, both decisions of MATHERS, J., and consequently both appeals were dismissed without costs.

*O'Connor and Blackwood*, for plaintiff. *Hudson and Levinson*, for defendants.