

of the order together, they may, I think, be read as giving liberty to serve the summons and statement of claim out of Ontario.

Mr. Aylesworth called attention upon the argument to the provision of the order fixing 30 days from the service of the statement of claim as the time within which the statement of defence was to be delivered, and contended that this was unauthorised, as the defendant was entitled under Con. Rule 246 to 8 days from the expiration of the time for appearance in which to deliver his statement of defence.

I am of opinion that Mr. Aylesworth's contention is well founded, and that the order should be varied by striking out so much of it as requires the defendant to deliver his statement of defence within the time limited for appearance.

The appeals will be allowed and the order of the 4th September, 1909, varied as I have mentioned, and, subject to that variation, the defendant's motions will be dismissed.

The costs of the motions and of the appeals will be costs in the cause.

RIDDELL, J.

OCTOBER 26TH, 1909.

ALLEN v. CANADIAN PACIFIC R. W. CO.

Railway—Carriage of Goods—Liability for Loss—Contract with Express Company—Absence of Privity between Shipper and Railway Company—Form of Action—Tort or Contract—Special Terms of Contract—Right of Railway Company to Benefit of—Agency—Construction of Contract.

Action by a manufacturers' agent and commission merchant to recover the value of a trunk of merchandise alleged to have been destroyed by the negligence of the defendants while in transit on their line near Smith's Falls. The plaintiff gave a written order to the Dominion Express Co. to carry the trunk from Toronto to Quebec. The defendants supplied the car, but the contents were wholly under the control and in the possession of a servant of the express company. The express company asserted that their liability was at most \$50 under the terms of the shipping bill; the plaintiff sued the defendants for the full value of the goods.

Shepley, K.C., and G. W. Mason, for the plaintiff.

W. Nesbitt, K.C., and A. D. Armour, for the defendants.