

The purport of the contract sued upon is stated in the fourth paragraph of the statement of claim above quoted. It is not set up as a contract entered into by the Grand Trunk R. W. Co. as agents for the Toledo, St. Louis, and Western R. R. Co. On the contrary, it is pleaded as a contract made by the Grand Trunk R. W. Co., and involves, not an allegation that the Grand Trunk entered into such contract as agents for the connecting lines, but rather that they undertook to make contracts with the connecting lines whereby they would be enabled to fulfil their own contract to carry the plaintiff's goods from Stratford to their destination. As pointed out by the local Judge, such a contract would not establish privity between the plaintiff and the Toledo, St. Louis, and Western R. R. Co., and the plaintiff would have no cause of action for its breach against that company. Although a partnership between the Toledo, St. Louis, and Western R. R. Co. is alleged in paragraph 9, it is not alleged that the goods were lost upon the line of railway said to be operated by such partnership, and it is not alleged that the Grand Trunk R. W. Co. made the contract as agent for the partnership or as a member of such partnership, but rather that the contract was made with the plaintiff by the Grand Trunk R. W. Co. on their own behalf. From every point of view, therefore, I agree with the view of the learned Judge that the statement of claim does not disclose any cause of action against the Toledo, St. Louis, and Western R. R. Co. In the absence of an allegation in the statement of claim that the Grand Trunk R. W. Co. contracted as agents for their co-defendants—that the plaintiff intends to allege—such agency will not be presumed. Without such an allegation a cause of action against the Toledo, St. Louis, and Western R. R. Co. is not disclosed; and upon the allegations in the statement of claim the present motion must be disposed of.

In the absence of a contract made by the Grand Trunk R. W. Co. on behalf of the partnership and binding upon the partnership, consisting of the Grand Trunk R. W. Co. and the Toledo, St. Louis, and Western R. R. Co., I cannot see how the latter can be held to be a proper or necessary party to the plaintiff's action against the Grand Trunk R. W. Co., so as to bring the case within clause (g) of Rule 162. Again, if any contract was made by the Grand Trunk R. W. Co. on behalf of the Toledo, St. Louis, and Western R. R. Co., that contract was not broken in Ontario, nor was it to be performed within Ontario. The case is, there-