

O. L. R. 606, distinguished.] Here there are technically two causes of action, but . . . there is practically one thing to determine, and that is the liability of defendant company for the destruction of the goods. Plaintiffs must shew, as part of their case, that they are the owners of the goods, and prima facie they were the owners, as they were the shippers, but the defendant company say they have delivered these goods to the other defendant, who was the consignee. The other defendant denies this, and the proper determination is a matter of law depending upon the facts as between the two defendants. . . . The defendant company deny liability for the loss of the property, and they say further, as part of their defence, that plaintiffs are not entitled to sue, as the property has been actually or constructively delivered to defendant Kerr. All that plaintiffs desire is to get pay for this property, if any one is liable for it under the circumstances. The defendant company, it is contended, are liable; and if, at the time of its destruction, this property had been delivered to Kerr, then Kerr is liable to plaintiffs. This seems to me a singularly proper case for the application of Rule 192. There is doubt—a doubt arising only as to what are the facts as between the defendants. [Reference to *Child v. Stenning*, 5 Ch. D. 701; *Harvey v. Grand Trunk R. W. Co.*, 9 P. R. 80, 7 A. R. 715; *Cox v. Barber*, 3 Ch. D. 368; *Honduras R. W. Co. v. Tucker*, 2 Ex. D. 301; *Bennetts v. McIlwraith*, [1896] 2 Q. B. 464; *Tate v. Natural Gas Co.*, 18 P. R. 82; *Evans v. Jaffray*, 1 O. L. R. 614; *Langley v. Law Society*, 3 O. L. R. 245.]

Appeal allowed. Costs in cause to plaintiffs.

BRITTON, J.

MAY 4TH, 1903.

CHAMBERS.

### LEMOINE v. MACKAY.

*Evidence — Foreign Commission — Postponement of Trial—Delay—Security for Costs—Other Terms.*

Appeal by plaintiffs from order of Master in Chambers (ante 390) allowing defendant to issue a commission to take the evidence of witnesses in England and Ireland, and postponing the trial meantime.

A. B. Aylesworth, K.C., for appellants.

R. McKay, for defendant.

BRITTON, J.—Upon the material before me, it is impossible to resist an impression that the application for a