Messrs. Bath & Son, to whom the defendants had given a monopoly of sale in Canada on condition that they would take 30 engines.

I think the respondent must be confined to the actual result as between the parties to it as was the case in *Field* v. *Manlove ante,* and if by their lack of action nothing was done to create a state of affairs such as is required to make a basis of liability under his contract, he cannot, in my judgment, recover.

I have not referred to the subsequent correspondence between the parties and the Buntin Reid Co. as illustrating what the word "orders" meant or the evidence upon that point, the admissibility of which is doubtful. See *Hastings* v. *North Eastern* (1900), A. C. 260. But if it is read and if the cases I have already mentioned are considered, there will not, I think, be much difficulty in concluding that the word "order" in a commercial contract is a well understood word and that it was used in its usual signification in the contract in this case.

The appeal should be allowed and the action dismissed with costs.

HON. SIR WM. MULOCK, C.J.EX., HON. MR. JUSTICE RIDDELL and HON. MR. JUSTICE LEITCH:—We agree.

HON. SIR G. FALCONBRIDGE, C.J.K.B. JUNE 8TH, 1914.

CANADA PINE LUMBER CO. v. McCALL.

6 O. W. N. 483.

Sale of Lumber—Delay in Shipment—Time, Essence of Contract—Trade Custom.

FALCONBRIDGE, C.J.K.B., in action for breach of contract for sale of lumber, on evidence gave judgment for plaintiff, holding that delay in shipment was due to matters not under plaintiff's control, and that time was not of the essence of the contract, either by agreement or by trade custom.

Ford v. *Cotesworth* (1868), L. R., 4 Q. B. 127, referred to.

Action to recover $2,868.97, the price of timber sold by plaintiff to defendant, tried at Toronto.

G. H. Watson, K.C., and A. L. Fleming, for plaintiffs.

W. E. Kelly, K.C., for defendant.