B. N. Davis, for defendants the transfer company, relied on Hinds v. Town of Barrie, 6 O. L. R. 656, 2 O. W. R. 995, where all the cases are cited and discussed.

D. L. McCarthy, for defendants the railway company, submitted to any order that might be made.

W. M. Boultbee, for plaintiffs, contended that paragraph 9 of the statement of claim took the case out of the principle of Hinds v. Town of Barrie.

THE MASTER.—I am of opinion that the motion must succeed and an order be made as in Andrews v. Forsythe, 7 O. L. R. 188, 3 O. W. R. 307. It seems reasonably clear that plaintiffs in their statement of claim set up two separate causes of action against separate parties. They first charge breach of contract by the transfer company and then breach of statutory duty by the railway company.

It is true that in paragraph 9 they attempt to set up a joint cause of action against both defendants, but not more successfully than in Hinds v. Town of Barrie. . . .

Either the transfer company were right in trying to cross the track when they did, or they were wrong. If the latter, plaintiffs should proceed against them; if the former, then against the railway company. As said by the Chancellor in Quigley v. Waterloo Mfg. Co., 1 O. L. R. 613, 614, plaintiffs must make up their mind whose neglect was the causa causans of the serious injuries they undoubtedly suffered. . . .

Scott v. London, etc., Docks Co., 3 H. & C. 596, would seem to shew that plaintiffs would prima facie have a good cause of action against the transfer company, and that they can safely leave it to that company to exculpate themselves if they can do so. If the railway company were in fault, the transfer company would clearly have a remedy over against them. . . .

CARTWRIGHT, MASTER. SEPTEMBER 14TH, 1904.

CHAMBERS.

BLACKLEY v. ROUGIER.

Particulars—Statement of Claim—Action for Commission on Sales of Goods—Information in Possession of Defendants.

Motion by defendants for particulars of the statement of claim. The action was to recover $8,472 as the balance due