

An action was commenced on 20th April, 1903, to have a declaration of the rights of the parties under that agreement. This action is still pending; and in it a special case has been stated "to obtain the opinion of the Court upon certain questions of law arising in the construction of the agreement on which the action" (known, I may remark, as "the omnibus action") "is brought."

These questions are as follows:

Is the city or the railway company, and which of them, on the proper construction of the agreement, entitled to determine, decide upon, and direct—

2. What time tables and routes shall be adopted and observed by the company?

The final answer to this question will practically settle all these actions brought to recover the \$100 a day penalty.

The statement of defence disputes the interpretation of the agreement relied on by the plaintiffs. It admits non-compliance with the time table of 12th April, 1904, but excuses it, on the ground that the defendants had not sufficient cars, and were unable to procure any, as their contract with the plaintiffs obliged them to have all their cars manufactured in Toronto.

The policy of the law now requires the determination of all questions between the same parties arising out of the one contract to be disposed of in one action and at one time as far as possible.

Here there can be no objection to postponement on the usual grounds of loss of claim or loss of evidence, as the fact of non-compliance is admitted by defendants.

From the past and present attitude of the parties it is almost certain that this question, No. 2 of the special case, will be carried as far as the parties can take it. It arises fairly and unavoidably in the special case to which the parties have agreed, and it does not seem that any good result can accrue from a trial of the penalty actions before the special case has been finally disposed of.

The motions will therefore be granted with costs of same in the cause.