might be required by charterer, with privilege to charterer of moving vessel afterwards at own expense. It was provided that cargo was to be furnished at customary despatch; that lay days should commence from the time the vessel was ready to receive cargo and written notice thereof given to the charterer, and that for each day's detention by charterer's default he should forfeit $60 per day to the owner of ship. On arrival of the vessel on the 23rd of August the master was notified by the charterer to proceed to loading berth about 100 yards from where vessel was then lying. On the 28th of August the master mailed a notice to charterer that the vessel was then at loading berth and ready to receive cargo on the 29th. At time notice was sent, the vessel was not at loading berth.

Held, that the vessel should have been at her loading berth ready to receive cargo at the time notice was sent, that the notice was therefore insufficient, and lay days did not commence to run previous to commencement to deliver cargo.

The words "customary despatch" in the above charter have not a recognized meaning at the port of St. John with reference to the loading of lumber for shipment to South American ports. Their meaning must be taken to be that the vessel shall be loaded with the usual despatch of persons engaged in the trade having a cargo ready for loading. Upon the evidence, the Court found the rate to be 35 M. per weather-working day; substantial work, though not amounting to half a day, to count as half a day.

Cargo delivered under the above charter was brought to the loading berth over the Intercolonial Railway, and delivery was delayed by the railway. It was contended by the charterer that, as he had a right to name the load berth, any delay arising from delivery by railway was to be borne by the vessel.

Held, that as the charterer was bound to deliver cargo at the customary despatch of persons having a cargo at the place of loading ready for shipment, delay must be borne by charterer.

W. Pugsley, Q.C., and *A. P. Barnhill*, for plaintiff. *A. A. Stockton*, Q.C., and *C. J. Coster*, for defendant.

En Banc.] DIBBLEE *v.* FRY. [Feb. 9.

Action on limit bond—Striking out pleas—Supreme Court Act, s. 133.

In an action on a limit bond taken in a suit in the City Court of St. John defendants pleaded that said Court did not have jurisdiction, and in said plea set out at length the proceedings in said Court, showing the issue and service on Nov. 16 of a summons returnable on Nov. 17, and that on Nov. 25, without the service of any other process, plaintiff recovered a