

# The Ontario Weekly Notes

Vol. V.

TORONTO, NOVEMBER 21, 1913.

No. 9

## APPELLATE DIVISION.

NOVEMBER 3RD, 1913.

ALLEN v. GRAND VALLEY R.W. CO.

*Contract—Supply of Goods for Railway Construction—Action for Price—Guaranty—Defence of Sureties—Variation in Terms of Contract—Evidence—Term of Credit—Expiry before Action Brought—Counterclaim.*

The following is a transcript of the oral judgment of the Court delivered by MEREDITH, C.J.O., at the conclusion of the argument, the result of which is noted ante 197:—Mr. Smith has very fully presented the case from the standpoint of the appellants, and it seems reasonably clear. The letter of the respondents of the 4th July, 1908, was simply a quotation of prices. In the letter of the 13th July, 1909, from the appellant company's superintendent to the respondents, accepting what is referred to as the tender of the 14th July, 1908, for the supply of points "in general accordance with tracings and sketches then submitted, but to be amended as necessary to agree with the requirements of our own engineer and that of the city engineer of Brantford," it was stated that, "as explained to your Mr. Ward and Mr. Hampton, there will be certain alterations and probably additional work in various job numbers, but the details of these alterations and additions can only be arrived at when your engineer comes here to prepare the working drawings." Then, after referring to the shipment of the materials, the importance of getting some of the "jobs" completed quickly, and the terms of payment, the letter concludes with the following statement: "Jobs Nos. 33, 34, and 35 are to be complete lay-outs, including the manganese steel rails curved to the required radius; prices of these three lay-outs to be arranged as soon as detailed drawings have been prepared."