

founded. By the judgment it was adjudged that the plaintiff was entitled to damages, an inquiry as to them was directed, and further directions were reserved; but there was no direction for the payment of money.

Appeal dismissed; costs in the appeal to the Judicial Committee.

MCCABE v. NATIONAL MANUFACTURING CO.—RIDDELL, J.—
MARCH 26.

Master and Servant—Wages—Contract in Writing—Alleged Change in Amount—Onus—Conflicting Testimony—Counterclaim—Trover—Equitable Assignment—Acceptance of Order.—Action for arrears of salary of the plaintiff as a salesman for the defendants. In 1907 the defendants employed the plaintiff, and by a written contract agreed to pay him \$240 per month and expenses for 12 months from the 4th February, 1907. The plaintiff at first worked in Ontario, but was afterwards sent to Nova Scotia, where he made profits for the defendants. In the autumn of 1907 he desired to return to Ontario. He said that he was allowed to return, still in the defendants' service, without any change in salary. The defendants said he left their service and terminated the contract, they intending, and so telling him, to find a job for him in Ontario, but only at \$30 per week and expenses. He came to Ontario, and, after a short delay, worked for the defendants till April, 1908, receiving on account from time to time sums much less than he had received while in Nova Scotia. Held, the oral testimony being conflicting, and it being admitted that the written contract had been entered into, that the onus was on the defendants, desiring to get rid of the contract, to prove that it was terminated. This onus the defendants had failed to satisfy, and the plaintiff was entitled to remuneration at the contract rate up to the 4th February, 1908, deducting pay for a month and a half during which he did not work for the defendants; and to a quantum meruit for the period after the 4th February, 1908, fixed at \$30 a week and expenses; the defendants to pay the plaintiff's fare from Nova Scotia to Ontario. The defendants' counterclaim against the plaintiff as in trover for the value of a separator is dismissed. The defendants were held liable to the plaintiff for the amount of an order in the plaintiff's favour given by one Bell and accepted by the defendants, the facts differing this claim from *Rodick v. Gandell*, 1 D. M. & G. 763, and *Hall v. Prittie*, 17 A. R. 306, and bringing it within *Lane v. Dun-*