

*Held*, that the company could not be held to have authorized the alteration and were not found by the contract as altered.

*Osler*, Q.C., and *Bruce*, Q.C., for plaintiffs. *Aylesworth*, Q.C., for defendants.

Meredith, C.J., MacMahon, J.]

[May 10.

SAWYER v. ROBERTSON.

*Jury notice—Exclusive jurisdiction of Chancery—R. S. O. c. 51, s. 103—Legal and equitable issues—Rule 551.*

The plaintiff's claim was to enforce a charge against the defendant's lands and for a personal order or judgment for immediate payment of the sum for which they asserted the charge.

*Held*, not such an action as would have been, before the Administration of Justice Act of 1873, within the exclusive jurisdiction of the Court of Chancery and within s. 103 of the Judicature Act, R.S.O. c. 51.

There being, therefore, legal and equitable issues raised, and notice for a jury given, Rule 551 applied, and the action should be entered for trial at a jury sittings.

*Kirwan Martin*, for plaintiffs. *Glyn Osler*, for defendant.

Meredith, C.J.]

[May 10.

MACDONALD v. GRAND TRUNK R. W. CO.

*Railway company—Carriage of goods—Condition limiting liability for loss—51 Vict., c. 29 (D.)—Canadian company—Part of line in foreign country.*

The Railway Act of Canada is not applicable to a railway situate in a foreign country, though operated by a company incorporated by or under the authority of the Parliament of Canada.

Therefore where goods shipped from Scotland to be delivered at Portland, Maine, to the Grand Trunk Railway Company, and by that company to be forwarded thence to the plaintiffs at Toronto, were destroyed by fire on the line of that company in New Hampshire, by negligence from which they were protected from liability by the terms of the contract for carriage:—

*Held*, that the provisions of s. 246 of 51 Vict., c. 29 (D.) were not applicable to the defendants' contract; and an action to recover damages for the loss of the goods failed.

*Aylesworth*, Q.C., and *Spencer Love*, for plaintiffs. *Wallace Nesbitt*, Q.C., for defendants.