fendants were within the jurisdiction, the order allowing service should be set aside.

Held, also, that, as it was not a case in which personal service out of the jurisdiction could be made, no order could be made for substitutional service. *Fry* v. *Moore*, 23 Q.B.D. 395; *Welding* v. *Bean* (1891) 1 Q.B. 100.

Blackwood, for plaintiff. *Levinson*, for defendants.

Province of British Columbia.

SUPREME COURT.

Full Court.] [April 8.

EAST KOOTENAY LUMBER CO. *v.* CANADIAN PACIFIC RY. CO.

Agreement—Non-liability for damage to property a consideration—"Property," meaning of.

In consideration of building a siding at the plaintiff company's mill, they entered into an agreement with the railway company freeing them from liability for damage caused by the railway to plaintiffs' property, or the property of any other person on the premises comprised in the siding. Two horses employed in hauling a car from one part of the siding to another were killed by a car being shunted on to the siding by an engine of the railway company.

Held, on appeal, reversing the finding of WILSON, Co.J., at the trial, that the word "property" in the agreement was not confined to fixtures and rolling stock, and horses on the premises were properly included.

Davis, K.C., for defendants, appellants. *Sir C. H. Tupper*, K.C., for plaintiffs, respondents.

Full Court.] FOLLIS *v.* SCHAAKE MACHINE WORKS. [April 8.

Master and servant—Workmen's Compensation Act, 1902—*"Dependants"—Costs occasioned by abortive common law action—Set-off—Power of arbitrator to direct taking of evidence on commission.*

Plaintiffs at times received money from deceased in his lifetime, but there was no evidence of the money having been sent at regular times or in regular amounts.