

room for all who offer themselves as passengers and in general to find seats for all passengers, but there is no right for a passenger to occupy any particular seat unless the seats are numbered and a ticket is bought therefor.

5. The conductor was within his rights in determining that the plaintiff should not occupy the seat of which he had taken possession; that F.'s retiring for a temporary purpose was not an abandonment of the seat, and that as the action thus failed upon the law it was dismissed with costs.

A. Lemieux, for plaintiff. W. H. Curle, for defendants.

Riddell, J.]

SCHLUND v. FOSTER.

[Jan. 18.

*Discontinuance—Terms—No action to be brought in any Court for same cause.*

Plaintiff's writ was issued Dec. 22, 1906, and upon the same day the statement of claim was filed in which the plaintiff was described as "at present residing at the City of Toronto." Copies of the writ and claim were served on the defendant Jan. 7, 1907. The plaintiff swore to his desire to have the case tried by jury and it was duly set down for trial for the Toronto winter assizes. In the meantime the plaintiff had taken advantage of the fact that the defendant was passing through Chicago to issue process out of the Supreme Court of Cook County in an action of assumpsit, and the defendant was served when passing through that city. It was admitted that the two actions were upon one and the same cause. The plaintiff eventually served notice of discontinuance and the defendant serving notice for an order setting aside the motion of discontinuance the plaintiff countered by serving notice that upon the return of this notice he would move for an order allowing him to discontinue the action on payment of costs, or for an order confirming the notice of discontinuance already filed.

*Held*, that the plaintiff could not discontinue except upon terms, that no action should be brought in this or any other Court, domestic or foreign, upon the same ground of action, and that no further proceedings be taken in the action in Chicago, or any other action already brought, and that the plaintiff pay the costs: see *Black v. Barry* (1887) which was a judgment by