

*Practice.*

Court of Appeal.]

[Jan. 14.

MERIDEN BRITANNIA CO. *v.* BRADEN.

*Costs—Liability to solicitor—Taxation against opposite party.*

Where, by an express contract, a party does not incur or become liable for costs to the solicitor representing him in an action, he cannot tax costs against the opposite party.

*Jarvis v. Great Western R. W. Co.*, 8 C.P. 280, and *Stevenson v. City of Kingston*, 31 C.P. 333, approved.

Decision of the Chancery Division, 16 P.R. 410, affirmed.

*W. H. P. Clement* and *A. McLean Macdonell*, for the appellant.

*J. W. Nesbitt*, Q.C., for the respondents.

Court of Appeal.]

[Jan. 14.

WILLIAMS *v.* LEONARD.

*Amendment—Pleading—Bills of Sale Act—Chattel mortgage.*

Decision of the Queen's Bench Division, 16 P.R. 544, affirmed on appeal.

*Moss*, Q.C., for the appellant.

*Gibbons*, Q.C., for the respondents.

Court of Appeal.]

[Jan. 14.

MILLS *v.* HAMILTON STREET RAILWAY CO.

*Costs—County Court—Nonsuit—Appeal.*

Upon the trial of a County Court action, counsel for the defendants, at the close of the plaintiff's case, formally moved for a nonsuit and stated that he would renew the motion at the close of the defendants' case. Then he called and examined three witnesses, but, when a fourth was sworn, the Judge interposed and said he would take the responsibility of entering a nonsuit. He heard argument from the plaintiff's counsel opposing this course, and the defendants' counsel said he proposed to tender his evidence and go on and complete the case. The Judge refused to hear further evidence, and entered a nonsuit, which in term he refused to set aside, the defendants' counsel neither opposing nor assenting to the motion. The plaintiff successfully appealed to the Court of Appeal. Upon the argument there, the defendants' counsel took the same position, but urged that the defendants should not be ordered to pay costs.

*Held*, however, that nothing was shown to induce the Court to depart from the general rule; and the defendants were ordered to pay the costs of the appeal, the last trial, and the action in term.

*J. W. Nesbitt*, Q.C., for the plaintiff.

*E. Martin*, Q.C., for the defendants.