there was no recognizance as required by 53 Vict., c. 2, s. 40, and an order made granting costs to the Justices.

On appeal,

Held, that the Judge had, irrespective of any recognizance, and in the exercise of the general jurisdiction of the court, power to award costs. Appeal dismissed with costs.

W. R. Mulock, Q.C., for Justices.

R. Cassidy for defendant.

H. A. Maclean for Attorney-General.

RE BY-LAWS OF CITY OF WINNIPEG EX PARTE BARRETT.

Separate schools—Public Schools Act of Manitoba, 1890, intra vires.

Summons on behalf of Barrett, a ratepayer of the City of Winnipeg, taken out under The Municipal Act, 53 Vict., c. 51, s. 258, calling upon the city to show cause why two by-laws, 480 and 483, should not be quashed for illegality.

By-law 480 provided for levying a rate for Municipal and School purposes in the City of Winnipeg for the year 1890. The second by-law, 483, amended the first by showing the proportion assessed for school purposes.

The principal ground stated in the summons was, "That because by the said by-laws the amounts to be levied for school purposes for the Protestant and Catholic schools are united and one rate levied upon Protestants and Roman Catholics alike, for the whole sum."

Applicant contended that the Public Schools Act, 1890, was *ultra vires* of the Provincial Legislature of Manitoba; that the old law was still in force, and the amounts required for educational purposes should have been levied separately upon Protestant and Roman Catholic ratepayers.

The application was heard before Killam, J., who

Held, 1. That the Public Schools Act was not *ultra vires*.

2. That the Public Schools Act itself did not create a system of denominational schools, or assume to compel any class to support denominational schools other than their own.

3. That the Public Schools Act, if enacted at the outset of the union, would not have been *ultra vires* in establishing a new system of schools, and in authorizing taxation without establishing or providing for the support of Separate Schools for any class. It was competent for the Legislature to abolish the system of Separate Schools which it had established.

Summons dismissed with costs.

On appeal to the Full Court,

Appeal dismissed with costs, DUBUC, J., dissenting.

Ewart, Q.C., and *G. F. Brophy*, for applicant.

Hon. J. Martin, Atty.-Gen., and *J. S. Hough*, for the City of Winnipeg.

[This case has gone to the Supreme Court.—ED.]

The following Manitoba Cases are reprinted, by permission, from *The Western Law Times*.

BAIN, J.] [January 29.

LAIRD *v.* TRERICE.

Writ—Service out of the jurisdiction.

The plaintiff sued the defendant, a non-resident, upon a cause of action which arose out of the jurisdiction. No order allowing the service was obtained prior to the service of the writ, but the copy of writ was served in the usual way. After the service, the plaintiff applied to the referee for an order allowing the service and for leave to proceed. The referee held that the two orders must be separate and that the order allowing the service must be served upon the defendant before the order for leave to proceed could be obtained. The plaintiff then applied to a Judge in Chambers, who held:

1. That the service of a writ outside the jurisdiction has practically no effect at all until an order allowing the service has been obtained, and "I am quite satisfied that the proper practice is to obtain an order allowing the service of the writ before the writ is served and serve it with the writ." The amendment to the A.J.A., 1885, in 1886, (49 Vict., cap. 35, sec. 32,) practically repeals sec. 18, C.L.P.A., 1852.

Application refused.

Patterson for applicant.

BAIN, J.] [Feb. 10.

FREEHOLD L. & S. CO. *v.* BRYSON, AND GALT, ET AL, CLAIMANTS.

Interpleader—Defects in sheriff's affidavit—Waiver of—Plaintiff in issue—Possession.

Appeal to Judge in Chambers from interpleader order of the referee directing an issue