

to dismiss the plaintiff for alleged breach of duty in connection with work not within the terms of his employment; and even if such work was within the terms of his employment the defendant had, upon the evidence, no reasonable grounds for dismissing the plaintiff.

*Held*, also, that where one party puts himself in the power of the other, the latter should exercise the power with entire good faith; and, upon the evidence, that the defendant had not exercised the power given him by the 10th clause, in good faith, but even if he had, that he had not exercised it in a legal manner, for he was bound to give the plaintiff an opportunity to be heard and to explain his alleged misconduct, which he did not do.

*Carscallen*, for the plaintiff.

*Osler*, Q.C., and *J. J. Scott*, for the defendant.

Robertson, J.]

[Dec. 20, 1888.

DOMINION BANK v. DODDRIDGE.

*Notice of motion for judgment—Dispensing with service of—Con. Rule 467—Sufficient cause.*

Upon a motion to the Court for judgment on the statement of claim in default of defence, the plaintiffs asked for an order dispensing with service of notice of the motion upon the defendant under Con. Rule 467. It was not shown that defendant could not be served. The order was refused.

*Held*, that the fact that the defendant had been personally served with the writ of summons and statement of claim and had not appeared was not "sufficient cause" within the meaning of the rule.

Div'l Ct.]

[Dec. 22, 1888.

ANDERSON v. FISH.

*Sale of goods—Stoppage in transitu—Consignor and consignee—Right of carriers to prolong period of transitus.*

The defendants, unpaid vendors of goods, shipped the goods over the Grand Trunk Railway to the vendee at W. When the goods arrived the railway company's agent at W, sent an advice note to the vendee, who refused to take it. After this the vendee assigned to the plaintiff for the benefit of his creditors, and the plaintiff, as soon as the

assignment was perfected, produced it to the railway company's agent and claimed the goods, offering to pay the freight, but producing no advice note. The agent did not refuse to deliver the goods, but said that according to the rules of the company, when the person claiming the goods was an assignee for the benefit of creditors his duty was to telegraph to the company's solicitor for instructions. He did so telegraph, but before he received an answer, and on the same day, the defendants notified him not to deliver the goods to the vendee or his assignee, assuming a right to stop them in transitu.

*Held*, FALCONBRIDGE J., dissenting, that the action of the railway company's agent in delaying till he received instructions from the solicitor was not wrongful, that the *transitus* was not at an end when the defendants intervened, and the right of stoppage was well exercised.

*G. T. Blackstock*, for the plaintiff.

*J. B. Clarke*, for the defendants.

Div'l Ct.]

[Dec. 22, 1888.

ISBISTER v. SULLIVAN.

*Courts—Interpleader—Jurisdiction of District Court of Thunder Bay—Jurisdiction of High Court of Justice—R. S. O. c. 91, s. 56.*

The District Court of the Provisional Judicial District of Humber Bay has jurisdiction in interpleader under R. S. O., c. 91, s. 56, for it has "the jurisdiction possessed by County Courts," which is by R. S. O. (1877), c. 43, s. 19, s.s. 6, "in interpleader matters as provided by the Interpleader Act;" and such jurisdiction is determinable in a sheriff's interpleader by the fact whether the process under which the goods were seized has issued out of the District Court, and not by the amount for which the recovery was had or the process issued. (See R. S. O. (1877), c. 54, s. 22.)

The High Court of Justice has no jurisdiction, by virtue of R. S. O. c. 91, s. 56, s.s. 2, or otherwise, to entertain a motion against a verdict or judgment obtained in the District Court in an interpleader issue.

*Delamere*, for the plaintiff.

*Aylesworth*, for the defendant.