

Divisional Court.]

[Jan. 25.]

MARSHALL v. ONTARIO CENTRAL RAILWAY.

Wrongful dismissal—Railways—Road-master—Drinking on duty—Railway Act, 51 Vict., c. 29 (D).

Where a person occupying the position of roadmaster on the defendants' railway, while on duty in charge of a gang of men on a special train, picking up ties along the road, was proved to have been drinking with the engine driver and the conductor, from a bottle of whiskey from time to time during the trip, such conduct justified his dismissal, as being inconsistent with the faithful discharge of his duty, and prejudicial, or likely to be prejudicial, to the defendants' interests; the dismissal being also justifiable in that his conduct constituted the participation in a criminal offence under s. 293 of the Railway Act, 51 Vict., c. 29 (D), which prohibits under a penalty, etc., anyone giving or bartering spirits or intoxicating liquor to or with any servant or employee of the company while on duty.

Clute, Q.C., for the plaintiff.

W. R. Riddell, and E. Munro Grier, for the defendants.

ROSE, J.]

[Feb. 1.]

MARTIN v. SAMPSON.

Costs—Taxation—Defendants severing—Parties—Action to set aside chattel mortgage.

An appeal by the plaintiff from the ruling of a local taxing officer allowing a separate bill of costs to the defendant Angus, the action having been dismissed as against both defendants with costs: 24 A.R. 1.

The action was brought by the assignee for the benefit of the creditors of the defendant, Angus, to set aside a chattel mortgage made by that defendant to the defendant Sampson. The defendants appeared and defended by different solicitors.

Held, that it was not necessary for the defendants to join in their defences, and the defendant Angus was entitled to a separate bill of costs, the plaintiff having joined him as a party and asked for costs against him; but that his costs should be kept down on taxation, as his interest after a certain stage was only that of a "watching" party.

Semle, also, that he was not a necessary party.

Gibbons v. Darvill, 12 P.R. 478, distinguished, as being an action brought by a simple contract creditor, and a decision that all persons interested should be parties to the record.

The appeal was dismissed with costs.

C. D. Scott, for the plaintiff.

H. Cassels, for the defendants.