

*Held*, that execution was stayed upon the judgments of the High Court and Court of Appeal until the decision of the Supreme Court.

Construction of ss. 46, 47 (e), and 48 of the Supreme and Exchequer Courts Act, R.S.C., c. 135.

*Semble*, that payment out of the moneys in court to the defendant of his costs of the High Court and Court of Appeal, upon the undertaking of his solicitors to repay, in the event of the further appeal succeeding, could not properly be ordered.

*Kelly v. Imperial Loan Co.*, 10 P.R. 499, commented on.

*Pattullo* for plaintiffs.

*Masten* for defendant.

Chy. Div'l Court.]

[Feb. 21.

GORDON v. ARMSTRONG.

*Security for costs—Nominal plaintiff—Action to establish right of way—Mortgagor and mortgagee—Parties.*

Where an action is brought to establish a right of way over lands adjoining those of which the plaintiff is the owner, subject to a mortgage, and, having regard to the value of the property, the amount of the mortgage, and other circumstances, the lands may be said to be really the mortgagee's, and the action substantially his, the defendant is entitled to security for costs if the plaintiff be without substance.

*Held*, per MACMAHON, J., in Chambers, that the mortgagee was not a necessary party to the action.

But *semble*, per MEREDITH, J., in the Divisional Court, that he was a proper party, and should have been added.

*F. J. Travers* for the plaintiff.

*Ritchie, Q.C.*, for the defendant.

*F. E. Hodgins* for the mortgagee.

Chy. Div'l Court.]

[March 2.

MERIDEN BRITANNIA CO. v. HRADEN.

*Costs—Separate defences—Indemnity against costs—Taxation against opposite party.*

Costs are not to be needlessly incurred; only such as are reasonably incurred with regard to the necessities of the case should be allowed.

Where there is no liability on the part of a party for costs, none can be allowed him from his opponent.

And where one defendant agreed to save another harmless from the costs of an action, in the written retainer of the latter to his solicitors it was provided that the costs should be charged to the former; and no reason for defending by separate solicitors appeared, unless it was the hope of getting two sets of costs from the plaintiffs;

*Held*, that the indemnified defendant was not entitled to costs against the plaintiffs.