

## Practice.

ROSE, J.]

[May 3.

FARQUHAR v. ROBERTSON.

*Costs—Action of libel—Recommendation of jury as to costs—Affidavits of jurors—Depriving successful defendants of costs—"Good cause"—Costs of special jury.*

When the special jury before which an action of libel was tried, returned to the court-room after considering their verdict, the foreman announced a verdict for the defendant. He then asked if the jury had anything to do with the question of costs. The trial Judge replied that he thought not, but if any recommendation was made it would be considered. The foreman then announced that in the opinion of the jury each party ought to pay his own costs.

Upon a motion by the plaintiff to the trial Judge for an order disposing of the costs in the way recommended by the jury,

*Held*, that the recommendation of the jury as to costs was not a part of their verdict, but was an announcement of a result at which they had no right in law to arrive; the verdict was complete before anything was said as to costs. If the verdict for the defendant would not have been given except with the recommendation as to costs, that would be matter for consideration upon a motion for a new trial, and not upon the present motion.

Upon the motion the plaintiffs filed affidavits of some of the jurors, stating that they would not have agreed in a verdict for the defendant if they had thought the result would be to throw upon the plaintiffs the whole costs of the action.

*Held*, that these affidavits were not receivable in evidence.

*Regina v. Feilowes*, 19 U.C.R. 48, followed.

*Jamieson v. Harker*, 18 U.C.R. 590, distinguished.

It was also contended by the plaintiffs that the trial Judge should make an order depriving the successful defendant of costs upon the recommendation of the jury and the facts appearing in evidence.

*Held*, that the question of costs was within the power of the trial Judge, and he could only interfere with the event for "good cause" (Rule 1170). By acting on the recommendation of the jury he would in effect be abdicating his

functions, and allowing the jury to determine what was "good cause."

"Good cause" means some misconduct leading to the litigation or in the course of the litigation which requires the court in justice to interfere; and there is a marked distinction between interfering with costs going to the plaintiff and costs going to the defendant; and upon the facts of this case there was no "good cause" for interfering. The trial Judge certified for the defendant's costs of a special jury summoned at his instance.

*Robinson*, Q.C., and *Lefroy* for plaintiffs.

*S. H. Blake*, Q.C., and *J. B. Clarke* for defendants.

Q.B. Div'l Ct.]

[June 22.

NIAGARA GRAPE CO. v. NELLIS.

*Consolidation of actions—Rule 652—Staying actions—Identity of issues.*

The plaintiffs brought four actions each against a different person, alleging that the defendant in each case entered into a separate agreement with the plaintiffs to purchase and pay for certain grape vines, and to allow the plaintiffs certain future benefits to be derived from the possession and cultivation of the vines, and claiming payment, an account, and damages. The statements of defence were practically the same in all the actions, the defendants setting up among their defences that by the fraud of the plaintiffs certain promises and warranties on their part were omitted from the written agreement, and that the defendants were induced to enter into the agreement by fraud and misrepresentation on the part of the plaintiffs, and claiming rectification and damages. The sales to the several defendants were entirely separate and distinct transactions made at different times and under different circumstances, but the form of agreement made use of with each defendant was the same.

An order was made in Chambers under Rule 652 on the application of the defendants in all the actions staying proceedings in all but one, which was to be treated as a test action, the defendants agreeing to be bound by the result of it, but the plaintiffs being allowed to proceed to trial in the other actions after the trial of the test action, if they deemed proper.

*Held*, that actions will only be stayed where the questions in dispute are substantially the