

and the trial judge did not give judgment till after the passing of the new Rule, and then ordered that the plaintiff should have costs on the High Court scale.

An appeal from this order was dismissed by a Divisional Court.

*Per* BOYD, C.: The amendment of the Rule was to be regarded by the trial judge while the application of the plaintiff for full costs was before him, and while the action was still pending. Changes in the law as to costs since the Judicature Act are matters of procedure, and, as such, act retrospectively, or with reference to current and uncompleted proceedings. But even if Rule 1170 in its unamended form applied, the Divisional Court had under it an alternative power over the costs, not limited by the condition as to good cause; and, as this was not a case in which the costs of the plaintiff should be diminished by taxation on a lower scale, or by the allowance of a set-off, the jurisdiction should be exercised in accordance with the view of the trial judge.

MEREDITH, J., *dubitante*, considered himself bound by the decision of the Common Pleas Division in *Island v. Township of Amaranth*, *ante*, to arrive at the same conclusion.

*D. R. Anderson* for the plaintiff.

*G. H. Hopkins* for the defendants.

Chy. Div'l Court.]

[Jan. 22.

NOXON *v.* PATTERSON.

*Particulars — Statement of defence — Patent action — Excision of pleading — Exclusion of evidence — Discretion.*

In making an order for particulars of the defence in a patent action, the better practice is to provide merely for exclusion of evidence in case of no particulars or insufficient particulars being delivered, and not to order the excision of the defence, if good *per se*.

And where both excision of the pleading and exclusion of evidence were provided for in an order,

*Held*, that the discretion of a Judge in Chambers in striking out the provision for excision was rightly exercised.

*Arnoldi*, Q.C., for the plaintiffs.

*W. H. Blake* for the defendants.

Chy. Div'l Court.]

[Jan. 22.

BUNTIN *v.* WILLIAMS.

*Attachment — Absconding debtor — Property in hands of third person — Delivery to sheriff — Order for.*

Where an attachment has issued against the property of an absconding debtor, an order may be made upon a third person for delivery to the sheriff of property of the debtor in the hands of such person.

And where the debtor's solicitor was shown by an applicant of the plaintiff to have in his hands for collection certain promissory notes, the property of the debtor, and the solicitor did not deny the fact, such an order was affirmed.

*R. McKay* for the plaintiff.

*Shilton* for the defendant.