

PRACTICE—PARTIES—PLAINTIFFS, JOINDER OF—CAUSES OF ACTION, JOINDER OF—SEVERAL PLAINTIFFS HAVING SEPARATE CAUSES OF ACTION, JOINDER OF—O R XVI., R. 1; ORD. XVIII., RR. 1, 8—(ONT. RULES 300, 340).

*Hannay v. Smuthwaite*, (1893) 2 Q.B. 412, is a decision of the Court of Appeal (Lord Esher, M.R., and Bowen and Kay, L.JJ.) on a point of practice, on which the court were not unanimous. The several shippers of different shipments of cotton, shipped on the same ship for carriage from and to the same places, were joined as plaintiffs, claiming against the defendants, the ship-owners, under the bills of lading given to the plaintiffs respectively, damages for short deliveries. Lord Esher and Kay, L.J., held that the plaintiffs were entitled to join in the same action; but Bowen, L.J., dissented, being strongly of opinion that the Rules do not warrant the joinder of several plaintiffs having separate and distinct causes of action. *Sandes v. Wildsmith*, (1893) 1 Q.B. 625, noted *ante* vol. 29, p. 435, is referred to, but the court neither expressed approval nor disapproval of it. Kay, L.J., however, observes of it: "In *Sandes v. Wildsmith*, I do not find any reference to Ord. xviii., r. 1." (Ont. Rule 340.)

PRACTICE—DISCOVERY—AFFIDAVIT OF DOCUMENTS—PRIVILEGE FROM PRODUCTION.

In *Budden v. Wilkinson*, (1893) 2 Q.B. 432, the Court of Appeal (Lindley and Lopes, L.JJ.) refused to follow the decision of *Maclean v. Jones*, 66 L.T.R.S. 653, on the ground that it was inconsistent with *Bewicke v. Graham*, 7 Q.B.D. 400. There were two points in the case arising on the sufficiency of an affidavit of documents: (1) Whether they were sufficiently described? and (2) whether the ground assigned for their non-production was sufficient? The action was for trespass to land, and the defence was a right of way. As to the first point, the documents were described as "certain documents," numbered 1 to 26, tied up in a bundle marked "A," and initialled by one of the defendants. This, the court held, sufficiently identified the documents, and that it was unnecessary to give any more specific description of them. As to the second point, the affidavit stated that they related "solely to the title or case of the plaintiffs, and not to the case of the defendants, nor do they tend to support it." It was contended by the defendants that the affidavit should have gone further, and stated that the documents did not contain anything to impeach the case of the plaintiffs; but this, also, the court held was unnecessary.