

*Held*, that the defences allowed by this provision are not limited to such as might have been, but were not, pleaded as the original action, but include such as were actually pleaded there, subject to the power of a judge to strike them out on the ground of embarrassment or delay.

In answer to the application, defendant set up by affidavit that he had fully intended to defend the Cape Breton action, but that, owing to misunderstanding, he was unable to be present when it came on for trial, and that, as a result, judgment went against him by default.

*Held*, that the pleas should not be struck out. *Gault v. Mc-Nabb*, 1 M.R. 35, distinguished, on the ground that in that case the defences sought to be raised in this Court had been set up in the original action and had been fully gone into at the trial and finally decided in favor of the plaintiff, and had been struck out on the ground of embarrassment and delay.

*Myers v. Prittie*, 1 M.R. 27, not followed. *British Linen Co. v. McEwan*, 8 M.R. 99, discussed.

*Hoskin*, for plaintiff. *Locke*, for defendant.

Perdue, J.]

[June 15.

SAVAGE v. CANADIAN PACIFIC RY. CO.

*Discovery—Examination—Privileged documents—Reports of officials to company respecting accidents.*

Action by widow for damages for the death of her husband killed in a railway collision, alleging negligence by the defendants. The chief clerk in the office of the General Superintendent of the central division of defendant company admitted on his examination that the reports as to the accident, claimed to be privileged, were made before the defendants had any notice as to litigation, and were partly in view of possible litigation and partly in the usual course of business, the company's rule requiring that particulars of every accident should be promptly reported to the proper officer by telegraph confirmed by mail. The defendant refused to say whether the accident was reported by wire or mail or to indicate by their numbers the reports made to the Superintendent. He admitted, however, that the documents for which privilege was claimed contained reports made under the above rule.

*Held*, 1. Following *Wooly v. North London Ry. Co.*, L.R. 4 C.P. 602, that such reports were not privileged.