

court (Wills and Grantham, J.J.) was of opinion, that in order to succeed on that ground it should have been found by the jury as a matter of fact "that the plaintiff freely and voluntarily, with full knowledge of the nature of the risk he ran, impliedly agreed to incur it." That there being no such finding, the admission of the plaintiff that he knew there was danger was not sufficient to entitle the defendants to succeed.

PRACTICE—COSTS—COUNTER-CLAIM AGAINST THIRD PARTY—ORD. 65, R. 1 (ONT. C. R. 1170).

*Lewis v. Trimming*, 21 Q. B. D. 230, was an action by a landlord against his tenant, in which the defendant brought a counter-claim for illegal distress against the plaintiff and a third party. The case was tried by a judge without a jury, and judgment was given for the plaintiff on the claim, and the counter-claim, but for the defendant against the third parties for £2 5s. 0d, "with such costs as the defendant would be entitled to by law." Upon taxation a question arose whether the defendant was entitled to any, and if any, what costs as against the third parties. On appeal to Huddleston, B., and Charles, J., they held that, as under Ord. 65, r. (Ont. R. 1170), the costs were in the discretion of the judge—the case having been tried without a jury—and there having been no exercise of such discretion in favor of the defendant, he was not "entitled by law" to any costs.

PRACTICE—CONTEMPT OF COURT—DISCHARGE OF PRISONER.

*In re Davies*, 21 Q. B. D. 236, is one of those cases which indicates the difficulty which courts of justice, from time to time, experience in maintaining their proper and lawful authority as against the "legal crank," a creature with which all courts are liable to be more or less troubled. In this case, Mrs. Davies, conceiving she had some right to certain property, and having failed in maintaining her right in a court of law, proceeded, in violation of the judgment of the court, to attempt to take forcible possession. An injunction was granted by Kay, J., restraining her from molesting the tenants of the property; but, nothing daunted, she renewed her attempt to take possession, and was ultimately lodged in gaol in December, 1886, where she had ever since remained, although she had been offered her freedom on her giving an undertaking not to renew her contempt, which she declined to do. With the consent of the plaintiff, the court (Lord Coleridge, C.J., and Mathew, J.) made an order for her discharge, on the terms that the injunction should be made perpetual during the currency of the plaintiff's tenancy, that a copy of the order should be handed to the owner of the premises with a view to his obtaining the assistance of all constables and peace officers in case the defendant should renew her attempt to obtain forcible possession. That in case the defendant should be guilty of a further contempt, the official solicitor should, at the plaintiff's request, take the necessary steps to bring the offending parties before the court; and that Mrs. Davies should not be allowed to take any further proceedings without the leave of a judge in Chambers, and that if she did, the same were to be communicated by letter to the official solicitor, and the respondents were to be under no obligation to appear thereto unless the court otherwise ordered.