

Full Court.] SILLA v. CROW'S NEST PASS COAL CO. [January 25.

*Practice—Test actions—Consolidation of actions—Plaintiffs in some actions outside jurisdiction—Security for costs—Waiver.*

Appeal by plaintiff from an order for security for costs of action. Twenty-nine actions by different plaintiffs were commenced against defendants at one time, and subsequently forty-four similar actions were commenced. One action known as the *Leadbeater* action was ordered to be tried as a test action for the twenty-nine, and afterwards by consent four actions out of the forty-four were consolidated, by order of the Full Court, with the *Leadbeater* action and ordered to be tried as test actions for the whole seventy-three. In the *Leadbeater* action, and in one of the four remaining test actions, the plaintiffs resided in the jurisdiction and in the other three they resided outside the jurisdiction:—

*Held*, by the Full Court, reversing Irving, J., that the plaintiffs outside the jurisdiction should not be required to give security for costs.

S. S. Taylor, K.C., for appellant. E. P. Davis, K.C., for respondents.

Full Court] LEADBEATER v. CROW'S NEST COAL CO. [Jan. 25.

*Practice—Examination of solicitor—Order for—Summons—Affidavit in support—Rule 383.*

Appeal from an order of Irving J., requiring the plaintiff's solicitors S.S. Taylor and W. R. Ross to attend for examination as to whether either of them had any interest in the subject matter of the suit.

There were several actions for damages brought against colliery owners by relatives of miners killed in an explosion and the defendants applied to add the plaintiffs' solicitors as parties, and while the summons was pending they obtained under r. 383 an order on summons, in support of which no affidavit was filed, for the examination of the solicitors as to what interest they had in the subject matter of the action.

*Held*, that the summons should have been supported by an affidavit shewing that it was probable that the solicitors had some interest in the subject matter of the litigation, and the order should not have been made as of course.

A subpoena under r. 383 cannot be issued without an order therefor. Appeal allowed, Drake, J. dissenting.

S.S. Taylor, K.C., for himself and co-appellant. E. P. Davis, K.C., for respondents.