

was made afterwards to the Judge who had presided at the trial, and he held that he had jurisdiction to grant the application under Order 41 (A), which is substantially the same as our Rule 521. Whether the reference of the costs now in question to the trial Judge was brought to the attention of the learned Judge at the time was immaterial. The fact remained that the costs had not so far been disposed of.

Reference also to Hardy v. Pickard (1888), 12 P.R. 428.

The application should be granted, and the defendants should be allowed the costs which were reserved by the order granting the commission, and taxation thereof should be directed.

KELLY, J.

FEBRUARY 11TH, 1921.

McQUILLAN v. RYAN.

*Negligence—Fall of High Wall of Building Left Standing after Fire—Injury to Adjoining Low Building—Lease—Duty to Repair—Party Wall—Fire Insurance—Limitations Act—Act of God—Violent Wind not Exclusive Cause of Fall of Wall—Liability—Damages—Expenditure for Replacement—Interest.*

Action for damages for the destruction of the plaintiff's building by the collapse of a wall of the adjoining building, caused, as the plaintiff alleged, by the negligence of George B. Ryan, deceased, the defendants' testator.

The action was tried without a jury at Guelph.

H. Howitt, for the plaintiff.

W. S. Middleboro, K.C., for the defendants.

KELLY, J., in a written judgment, said that the plaintiff and the defendants' testator were the owners of adjoining lots fronting on a street in Guelph, upon each of which was erected a store-building, the buildings being separated only by a dividing wall, which was based half upon the property of each; that Ryan's building extended back 150 feet from the street, and was 3 storeys in height throughout its depth, while the plaintiff's building extended 50 feet from the street at the same height of 3 storeys and then 40 feet more at the height of one storey only; that on the 27th January, 1918, Ryan's building was destroyed by fire, the walls only remaining; and that on the 26th February, 1918, during a wind-storm, part of the southerly wall of the burnt building fell towards the south upon the one-storey portion of the plaintiff's building and crushed it to the ground. The negligence