

to do is to make a good title when he can be called upon to do so; and he could not be so called upon until the last instalment was demanded, or the defendant showed a readiness or willingness to arrange that according to the terms of the contract.

A nonsuit entered at the trial was set aside, and a new trial granted to enable a plea of fraud to be tried.

J. K. Kerr, Q.C., and C. J. Holman, for the plaintiff.

McMichael, Q.C., for the defendants.

CORPORATION OF DUNDAS V. GILMOUR ET AL.

Action—Trial of questions between co-defendants

—Delaying plaintiff—O. J. Act, Rule 112.

Held, under Rule 112 of the O. J. Act, where in an action the plaintiff is held entitled to recover against the defendant against whom the action is brought; the defendant is precluded from trying questions arising between himself and a co-defendant, added at his instigation, under Rule 108, in the trial of which the plaintiff has no interest, and which has the effect of delaying the plaintiff in his recovery.

Martin, Q.C., for the plaintiff.

Victor Robertson, for the defendant.

MCCANN V. CHISHOLM.

Lateral support to land—Action by tenant—Right to maintain.

Held, that an action against the proprietor of land for damage sustained to a building on the adjoining land by reason of the lateral support having been removed, may be maintained by the tenant of the land.

Osler, Q.C., for the plaintiff.

Moss, Q.C., for the defendant.

DUFF V. CANADIAN MUTUAL FIRE INSURANCE COMPANY.

Mutual Insurance Companies—Solicitor's costs—Separate branches.

Action to recover the [sum of \$3,343 for solicitors' costs from a Mutual Insurance Company.

Held [OSLER, J., dissenting], that under the Mutual Act (R.S.O. ch. 161), the plaintiff's remedy must be directed against the respective

branches for which the services were, in fact, rendered; and in case of a deficiency of assets of any of the branches, the members of the other branches are not liable for the claims of the defaulting or insolvent branches.

Per OSLER, J.—A creditor of the Company, as is the case of the plaintiff, for a debt incurred as part of the necessary expenses of the Company, though in relation to the business of some branches only, is entitled to be paid out of the Company's moneys derived from assessments for losses and expenses on policy holders in other branches.

Duff, for the plaintiff.

Laidlaw (of Hamilton), for the Hydrant Branch.

Osler, Q. C., for the County Branch.

REGINA V. GOODMAN.

Criminal law—Prisoners committed on one charge and tried on another—Consent.

The prisoners were committed for trial on a charge of gambling on a railway train by playing a game called "three card monte." On the case coming before the County Judge, an indictment was preferred under 42 Vict. ch. 43, sec. 3, for obtaining money by false pretences. The prisoners' counsel objected to their being tried on a different charge from that on which they were committed. The Judge overruled the objection, and on the charge being read over to the prisoners, and it being explained to them that they had the option of either being tried forthwith, or remaining untried until the next sittings of the Oyer and Terminer and General Jail Delivery, they pleaded not guilty, and said they were ready for trial. The case then proceeded, and the prisoners' counsel cross-examined some of the crown witnesses, and at the close of the case took several objections to the proceedings, but made no objection to the case having been tried without the prisoners' consent. A writ of Habeas Corpus having been issued, and the discharge of the prisoners moved for,

Held, that the motion be refused.

Per WILSON, C.J.—It is unnecessary to decide whether the prisoners' remedy was by Habeas Corpus or Writ of Error, because upon the facts they were not entitled to take either of their remedies.

Per OSLER, J.—The prisoners having been imprisoned under the conviction of a Court of