

accident as that which occurred; that the insurance company had adjusted and paid his loss; and that the action was brought by the insurance company in the plaintiff's name.

The Taxing Officer had refused to allow costs because the litigation was the litigation of the insurance company, and not of the plaintiff—the action being carried on at the risk and expense of the company, and not of the plaintiff.

It has been decided in many cases that costs are an indemnity, and an indemnity only. *Walker v. Gurney-Tilden Co.* (1899), 19 P.R. 12, affords only an instance of the application of the general principle.

The costs awarded were the costs of the insurance company, though awarded in the name of the assured.

*James Nelson & Sons Limited v. Nelson Line (Liverpool) Limited*, [1906] 2 K.B. 217, distinguished.

The appeal should be allowed, and it should be referred to the Taxing Officer to tax the costs on the basis of the insurance company being the real litigant and the plaintiff's name being a name which the law authorised the company to use to sue. The costs of this appeal should be added to those costs.

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BROWN v. TOUKS—LENNOX, J.—MARCH 20.

*Land—Action to Recover Possession—Evidence—Onus—Boundaries—Possession, Use, and Occupation—Dismissal of Action and of Counterclaim for Damages.*—An action for the recovery of a narrow strip of land, covered with concrete, of about 15 or 20 inches in width, extending easterly from the lane in the rear of the plaintiffs' and defendant's premises, in possession of the defendant, and for damages, an injunction, and other relief. The action was tried without a jury at Sandwich. LENNOX, J., in a written judgment, after reviewing the evidence, said that the onus was upon the plaintiffs to make out their case. There was no satisfactory evidence as to the original boundary; and it would be of no avail if the defendant had occupied in the way she said she had. As to use and occupation and possession, not only had the plaintiffs failed to turn the scale in their favour, but the evidence preponderated in favour of the defendant. The action should be dismissed with costs. The defendant counterclaimed for damages, but had sustained no serious damage. H. L. Barnes, for the plaintiffs. T. Mercer Morton, for the defendant.