

From Meredith, C.J.]

[March 13.]

MANN v. GRAND TRUNK RAILWAY COMPANY.

*Deed—Construction—Gravel.*

An appeal by the defendants from the judgment of MEREDITH, C.J., reported 32 O.R. 240, 36 C. L. J. 714, was argued before ARMOUR, C.J.O., MACLENNAN, MOSS, and LISTER, JJ.A., on the 7th of February, 1901. On the 13th of March, 1901, the Court, on the ground that there had been a misunderstanding as to the extent of the defendants' admission as to the removal of gravel, gave them the option of a new trial upon payment of the costs of the former trial and of the appeal, and in default dismissed the appeal with costs.

Wallace Nesbitt, K.C., for appellants. J. H. Moss, for respondents.

Practice.]

CHALLONER v. TOWNSHIP OF LOBO.

[March 13.]

*Appeal—Effect of allowing—Non-appealing party—Costs.*

Action to restrain a township corporation and a contractor from constructing a drain authorized by by-law of the township. The judgment of the High Court granted an injunction against, and ordered costs to be paid by both defendants, and ordered the corporation to indemnify the contractor if he paid them. The corporation appealed to the Court of Appeal, making the contractor a respondent; the latter appeared at the hearing of that appeal, but did not himself appeal. The appeal was allowed with costs.

*Held*, that the result of allowing the corporation's appeal was that the action should be dismissed as against both defendants, but the contractor should have no costs of the appeal.

*Semble*, that he should have his costs below against the plaintiff.

*Peterkin v. McFarlane*, 6 A.R. 254, *Re Gabourie*, *Casey v. Gabourie*, 12 P.R. 252, *Esdaile v. Pasne*, 40 Ch. D. 520, and *Dilke v. Douglas*, 5 A.R. 43, distinguished. *McDermott v. McDermott*, 3 Ch. 38, approved.

Aylesworth, K.C., for plaintiff, H. J. Scott, K.C., for defendant corporation. R. U. McPherson, for defendant Oliver.

Practice.]

REX v. BURNS.

[March, 19.]

*Criminal law—Procedure—Leave to appeal—Acquittal by magistrate—Application by prosecutor—Perjury—Corroboration—Criminal Code, s. 744.*

Motion by prosecutor, under s. 744 of the Criminal Code (as amended by 63 & 64 Vict., c. 46), for leave to appeal from the decision of a police magistrate acquitting the defendant of perjury, and refusing to reserve for the opinion of the Court of Appeal the questions whether there was