

[Prac.]

NOTES OF CANADIAN CASES.

[Prac.]

Boyd, C.]

[Dec. 23.]

C. P. Divisional Court.]

[December 24.]

**SHEPHERD V. THE CANADIAN PACIFIC
RAILWAY CO.**

*Award, appeal from—Time—Filing—R. S. O. c.
50, secs. 191, 192, 193.*

In the case of a voluntary submission to arbitration in which a right of appeal is reserved by consent, the procedure is governed by R. S. O. ch. 50, secs. 191, 192 and 193, and the time for appealing from the award runs from the date of filing.

McEdwan v. McLeod, 46 U. C. R. 235, followed.

A. H. Marsh, for plaintiff.

George Macdonald, for defendants.

Q. B. Divisional Court.]

[December 23.]

RE WALSH V. ELLIOTT.

Division Court—Jurisdiction—Liquidated and unliquidated amounts.

The decision of *Wilson, C.J.*, 22 C. L. J. 387, was reversed on appeal.

J. B. Clarke, for appeal.

Shepley, contra.

Q. B. Divisional Court.]

[December 23.]

GORDON V. PHILLIPS.

Discovery—Rule 285—Discretion—Information for purpose of pleading.

The plaintiff had a good cause of action but was unable to frame his statement of claim without first examining the defendant and another.

Held, that he was entitled to such discovery under Rule 285, O. J. A., and that a local judge had exercised a proper discretion in granting it.

Oster, Q.C., for the plaintiff.

A. H. Marsh, for the defendant.

**TOMLINSON ET AL. V. NORTHERN
R. W. CO.**

*Costs—Third party—Appeal—Discretion—Sec.
32, O. J. A.*

Held, that the order of *ARMOUR, J.*, ante p. 419, refusing the third parties their costs, was made in the exercise of a discretion, which by sec. 32, O. J. A., was not subject to review, without leave, and, as no such leave had been given, an appeal from the order was dismissed with costs.

The court directed that such costs as had been incurred by the third parties in establishing the defence which might properly have been incurred by the defendants, should be allowed by the taxing officer.

W. H. P. Clement, for the plaintiffs.

Boulton, Q.C., for the defendants.

Till, Q.C., for the third parties.

C. P. Divisional Court.]

[December 24.]

STEWART V. SULLIVAN.

Staying proceedings—Interlocutory costs—Default—Practice in equity and at common law.

In equity, if interlocutory costs payable by the plaintiff remained unpaid, the court might, but was not bound to stay proceedings, and would not if it were not equitable to do so.

At common law, while non-payment of such costs was not a ground for staying proceedings, yet if it appeared equitable to stay proceedings until they were paid the court in the exercise of its inherent jurisdiction might direct a stay. The common law practice is the more convenient one, and should now be followed.

And where the plaintiff served in succession four notices of trial for the same assizes, all of which were set aside as irregular, with costs against him, and he was in default for non-payment of such costs, the action was stayed until they should be paid.

Aylesworth, for the plaintiff.

McIntyre, Q.C., for the defendant.