

FALCONBRIDGE, C.J.

SEPTEMBER 25TH, 1903.

## BUCKINDALE v. ROACH.

*Security for Costs—Costs of Former Action Unpaid—Instructions Given by Same Plaintiff—Action Brought in Name of Wrong Person—Form of Order.*

On settling the order pronounced by the Master in Chambers, ante 775, it was confined to an order for security for costs with a stay of proceedings, plaintiff not being allowed the option of paying the costs of the former action.

Plaintiff appealed from the order.

S. B. Woods, for the appellant.

J. W. McCullough, for the defendant.

FALCONBRIDGE, J., affirmed the order of the Master as originally pronounced, varying the order as drawn up and issued by giving the plaintiff the option of paying the costs of the former action. Costs in the cause.

MACMAHON, J.

SEPTEMBER 25TH, 1903.

## TRIAL.

## DORAN v. McLEAN.

*Way—Claim to Right of Way—Evidence—Dedication—Way of Necessity—Trespass—Injunction—Damages.*

Action for trespass to land. Defendant claimed a right of way through the land in question, which was vested in fee in Martin Casselman at the time of his death in 1881. During his lifetime those engaged in lumbering operations in the vicinity passed through there occasionally during the winter months, and some of them passed through without molestation from him, but a barrier was placed by him along this piece of land which prevented the use of it as a highway by anyone, unless the barrier placed there by Casselman was removed.

C. G. O'Brian, L'Orignal, and W. S. Hall, L'Orignal, for plaintiff.

J. Leitch, K.C., for defendant.

MACMAHON, J., held on the evidence that Casselman never intended to dedicate that land to the public as a highway.