

*Held*, not so; for the defendant was on the face of the record estopped from pleading *non demisit*, and his denial could only be read as a traverse of the actual execution of the lease.

*Purser v. Bradburne*, 7 P.R. 18, commented on.

*Held*, also, that the "custom" pleaded was not the "custom" meant by s. 69, s.s. 4, of the Division Courts Act, R.S.O., c. 51, which refers to some legal custom by which the right or title to property is acquired, or upon which it depends.

*Lagh v. Hewitt*, 4 East 154, followed.

*Held*, therefore, that the action was within the competence of the Division Court, and that the costs should follow the event, in accordance with Rules 1170, 1172.

*Shepley*, Q.C., for the appellant.

*G. W. Marsh* for the respondent.

STREET, J.]

STRACHAN v. RUTTAN.

[Dec. 29.

*Costs—Barrister and solicitor acting for himself and co-trustees—Instruction—Counsel fees—Notice of trial.*

One of several trustees who is a barrister and solicitor, and acts for himself and his co-trustees as solicitor and counsel in an action, may tax against the opposite party his full costs, including instructions and counsel fees.

*Cradock v. Piper*, 1 McN. & G. 680, followed.

*Smith v. Graham*, 2 U.C.R. 268, distinguished.

Where one of several defendants gives notice of trial, and afterwards, becoming aware that the action is not at issue against the other defendants, abandons his notice, he cannot tax the costs of it against the opposite party.

*E. T. English* for the plaintiff.

*Langton*, Q.C., for the defendants McIntyre and Macdonell.

C.P. Div'l Court.]

ANDERSON v. QUEBEC FIRE INS. CO.

[Jan. 3.

*Security for costs—False address indorsed on writ of summons—Mistake—Amendment—Residence out of the jurisdiction—Temporary return—Costs.*

The plaintiff, who was a sailor on the lakes, at the time of the issue of the writ of summons was residing out of Ontario. The writ was, by a mistake of the plaintiff's solicitor, indorsed with a statement that the plaintiff resided in Windsor, Ontario; and upon the defendants moving for security for costs on the ground that the plaintiff had given a false address, the plaintiff declared that naming Windsor was a mistake, and that his true place of residence was Collingwood, Ontario. Collingwood was not then his actual place of residence, but he might perhaps have properly regarded it as his domicile. Pending the motion, however, the plaintiff returned to Ontario, and went to reside temporarily at Sarnia.