

Armour, C. J., Falconbridge, J., Street, J.]

[Jan. 25.]

HAGEN v. CANADIAN PACIFIC R. W. CO.

*County Court appeal—Divisional Court—Judgment of nonsuit—"Trial with a jury"—R.S.O. c. 55, s. 51, s.-s. (4).*

Where, at the trial of an action in a County or District Court, the Judge, at the conclusion of the plaintiff's evidence, withdraws the case from the jury, and gives judgment dismissing the action, an appeal lies from such judgment to a Divisional Court of the High Court, for there has not been "a trial with a jury," within the meaning of s. 51, s.-s. (4), of the County Courts Act, R.S.O. c. 55.

*Watson, Q.C., for the plaintiff. D'Arcy Scott, for the defendants.*

Rose, J.]

CREPEAU v. PACAUD.

[Jan. 28.]

*Costs—Apportionment of—Several issues—Divided success.*

In an action on a foreign judgment the defences were that the defendant was never served with the process of the foreign tribunal; that he never submitted to the foreign jurisdiction, to which he was not subject; and that the plaintiff's claim was barred by the Statute of limitations. The plaintiff, in reply to the last defence, set up a written acknowledgment. Judgment was given for the defendant upon the last defence. It being held that the acknowledgment was not sufficient to take the case out of the statute; but the other defences were not sustained in evidence, and the judgment pronounced was that the defendant should have the general costs of the action, and the plaintiff the costs of the issues upon which the defendant failed. The defendant moved before the trial judge to vary the disposition of costs.

*J. H. Moss, for the defendant, cited Lockhard v. Waugh, ante vol. 32, 677, 17 P. R. 269, and Jenkins v. Jackson (1891) 1 Ch. 89.*

*F. A. Anglin, for the plaintiff, referred to Blank v. Footman, 39 Ch. D. 678; Reinhardt v. Mentasti, 42 Ch. D. 690; Baines v. Warmesley, 47 L. J. Ch. 473; Neale v. Windsor, 9 Gr. 261; Rules 1149, 1154, 1176.*

*ROSE, J., refused the motion.*

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[Feb. 1.]

FRANCHOT v. GENERAL SECURITIES CORPORATION.

*Writ of summons—Service out of jurisdiction—Breach of contract within Ontario—Defective affidavit—Leave to supplement on appeal—Terms—Amendment—Costs—Undertaking.*

The plaintiff, desiring to bring an action against an incorporated company having its head office outside of this Province, for breach of a contract, obtained, ex parte, from a local judge, an order for leave to issue a writ