

it indicates what it is reasonable defendants should do for the safety of the public in this respect; that the per diem payments which defendants are charged with for neglect are not imposed qua penalty, but are merely constituted a debt to the local municipality; and that if defendants had complied, as they say, with the statute by placing fenders on the front ends of the cars, they were a fortiori operating them in a negligent and dangerous manner by doing so in a way which made the fenders ludicrously useless.

I do not think there is any substantial objection to the Judge's charge, or that evidence was improperly admitted.

The question submitted must therefore be answered in favour of the Crown.

CARTWRIGHT, MASTER.

APRIL 13TH, 1905.

CHAMBERS.

SPARROW v. RICE.

*Security for Costs—Motion by Person not a Party to Action—
Residence Abroad—Actor—Costs of Motion.*

Motion by C. B. Baker, who was not a party to the action, and who resided out of the jurisdiction, for an order setting aside the service upon him of the writ of summons, as having been made by mistake; and cross-motion by plaintiffs for an order staying Baker's motion until he gives security for costs.

R. W. Eyre, for Baker.

C. A. Moss, for plaintiffs.

THE MASTER.:—The point seems determined by *Re Pinkney*, 1 O. W. R. 715, and *Canadian International Mercantile Agency v. International Mercantile Agency*, 4 O. W. R. 338.

It was contended that Baker was not an actor. This is not tenable. He is clearly moving for benefit of defendant Burton, and not in his own interest. He could safely leave the matter alone, but he chooses to move, and so is an actor: see *Johnson v. Smallwood*, 2 Dowl. 588.

The cases . . . *Bilbrow v. Bilbrow*, 3 C. B. 730, and *Stevenson v. Thorne*, 13 M. & W. 149, are not decisions on the point in question.

There must be security as in *Re Pinkney* before the main motion can proceed. Unless this is given within 2 weeks, or such further term as is agreed on, the main motion will be dismissed with costs.