

interlocutory order made in the action an appeal was taken. Before the hearing of the appeal the plaintiff lost his interest in the case by allowing the mineral claim in question to lapse, and so the Full Court "struck out the appeal—no order as to costs." Subsequently the plaintiff's action was dismissed with costs, and the defendants claimed the costs of the appeal which the Registrar disallowed on taxation.

Held, by the Full Court, dismissing the appeal, and following *In re Hodgkinson* (1895) W.N. 85, that the statement "no order as to costs" means that each party must pay his own costs. So also where the court refuses to make any order as to costs.

Peters, K.C., for the appeal. *Martin*, K.C., contra.

Full Court.]

HARRIS v. DUNSMUIR.

[June 19.

Juror—Same juror sitting on former trial—New trial.

This action was originally tried in 1894 before a judge with a special jury, and plaintiff got a verdict for \$19,377. On appeal a new trial was ordered, and at that trial in 1897, also with a special jury, a non-suit was entered. On appeal a new trial was ordered by the Full Court (affirmed by the Supreme Court of Canada, 30 S.C.R. 334). The third trial took place before a judge with a special jury in December, 1901, and on the verdict the plaintiff obtained judgment for \$9,667.62. The defendant before the last trial changed her solicitors. At the first trial the defendant was in court, but on account of illness was not present at either the second or the third trial. James Muirhead was a juror on the first trial and also on the third trial, but neither the defendant nor her solicitors were aware of that fact until after the conclusion of the trial.

Held, refusing a new trial on this ground, that it was the duty of the solicitor to enquire who the first jurors were, an opportunity to do which is provided by sub-s. 5 of s. 59 of the Jurors Act.

Sir C. H. Tupper, K.C., and *Peters*, K.C., for defendant. *Bodwell*, K.C., and *Duff*, K.C., for plaintiff.

Full Court.]

McNAUGHT v. VAN NORMAN.

[June 25.

Mineral claim—Seizure by sheriff of the interest of a co-owner—Lapse of debtor's mining license—Sheriff's right to renew.

Interpleader issue. McNaught and McKinnon were co-owners of mineral claims up till 31st May when McKinnon's miner's certificate expired. Under an execution the sheriff seized McKinnon's interest on 29th March, and on 5th June, he obtained a special free miner's certificate in McKinnon's name for the purpose of reviving McKinnon's interest