fendant claiming to be entitled to indemnity over against a person not a party to the action, had served such person with a third party notice under Order 16, r. 48 (see Ont. R. 107, 108), and he had appeared thereto, the Court upon a summons for directions taken out by the defendant (see Ont. R. 111) give the third party, who did not admit his liability, liberty to appear at the trial of the action and take such part as the judge should direct, and be bound by the result, and ordered the question of his liability to indemnify the defendant to be tried at the trial of the action, but subsequent thereto.

In case a third party appears and admits his liability to indemnify, the Court will give him leave to defend the action.

SALM KYRBURG v. POSNANSKI.

Imp. (1883) *O.* 44, *r.* 2—*Ont. Rules* 357, 364, 365.

A judge at Chambers has power to order the issue of a writ of attachment for disobedience of an order of a judge at Chambers.

It is not necessary to make a judge's order a rule of Court as a preliminary to taking proceedings to enforce it.

[L. R. 13 Q. B. D. 211.

HUDDLESTON, B.—"It is contended that such obedience can only be enforced by proceeding according to the old practice, viz., by making the order a rule of Court, and by applying to the Court for an attachment for contempt of Court in disobeying the rule of Court."

Order 44, r. 2, enacts that no attachment shall issue without the leave of the Court, or a judge (see Ont. Rule 365). "Now, by the terms of s. 39, (see R. S. O., c. 39, ss. 20, 21), already alluded to 'any judge sitting in Court shall be deemed to constitute a Court.' Therefore the case of a single judge sitting in Court is included under the term 'Court' and 'judge,' can only mean a judge sitting at Chambers."

JONES v. CURLING.

Imp. (1883) *O.* 65, *r.* 1—*Ont. Rule* 428.

Costs—Action tried by jury—"Good cause," for not allowing costs to follow event—Appeal.

Where an action is tried by a jury the presiding judge has no jurisdiction under O. 65, r. 1 (Ont. Rule 428), to make an order by which the costs will not follow the event, unless there exist "good cause" within the meaning of that Rule, and consequently there is an appeal with respect to the existence of the facts necessary to give the judge jurisdiction to make such order.

"Good cause" within that Rule is the existence of facts showing that it would be more just not to allow the costs to follow the event, *e.g.*, oppression or misconduct of the successful party whereby costs have been increased unnecessarily.

The fact that an action is for the recovery of several closes of land, that the only defence is that the defendant is in possession, and that the plaintiff only succeeded as to some of the closes, does not constitute "good cause" within *O.* 65, r. 1 (Ont. Rule 428), since the verdict in such a case is distributive, and the costs would be taxed as upon a finding by the jury on separate issues.

[L. R. 13 Q. B. D. 262.

FRY, L.J., observed "the general scheme of Order 65, r. 1, is this: it places all costs in the discretion of the Court, but upon this there is an exception, namely, where there is trial by jury, and upon that there is a further exception, which brings the costs back within the discretion of the judge, namely, where there is "good cause." Now it appears to me whether the facts exist which give the judge the discretion must be the subject of appeal. It is not withdrawn from appeal because the discretion of it exist, is not the subject matter of appeal. . . . Now, in the present case what is there which can be called "good cause?" The plaintiff succeeded in recovering some closes, and failed with regard to other closes. The event in this case is a distributable event. The very form of the judgment shows that it is so, for it shows that the plaintiff only recovers certain of the closes, and it shows with equal distinctness that he fails to recover the others. Therefore, whether one looks at the form of the verdict or of the judgment, it is distributive, and the event with which it deals is not a single one. That being the case, I think that upon taxation the costs would follow those distinct issues. Is then the fact of the success of the plaintiff on some issues, and of his failure on other issues, by itself "good cause" for interfering with the rule that the costs follow the event? I am bound to say that it appears to me not to be so?"

BRETT, M. R., quoted with approval the *dictum* of the late Sir Geo. Jessel in *Cooper* v. *Whittingham*, 15 Ch. D., at p. 504: "As I understand the law as to costs it is this, that when a plaintiff comes to enforce a legal right, and there has been no misconduct on his part, no omission or neglect, which would induce the Court to deprive him of his costs, the Court has no discretion and cannot take away the plaintiff's right to costs. There may be misconduct of many sorts. For instance, there may be misconduct in commencing the proceedings, or some miscarriage in the procedure, or an oppressive or vexatious mode of conducting the proceedings, or other misconduct which will induce the Court to refuse costs; but where there is nothing of the kind the rule is plain and well settled, and is as I have stated." This, he thought, though not said with reference to O. 65, r. 1, serves nevertheless as a good indication of what is meant by "good cause" in that rule.

See *Walmsley* v. *Mitchell*, 5 O. R. 427.