

with the other members of the Court, and a majority of them at least think the justice has power, for the absence of a material and necessary witness, to adjourn for a longer period than from one day to the next, and that it is not necessary that it should appear by affidavit that the witness is necessary and material, for he may have this information from the proceedings of the trial. I think, however, this power should be exercised with great care, and when the trial has begun ought not to be exercised unless under very exceptional circumstances".

W. VanWart, Q.C., for plaintiff.

O. S. Crocket, for defendant.

Province of British Columbia.

SUPREME COURT.

MCCREIGHT, WALKER, }
and DRAKE, JJ.

[Nov. 5, 1896.]

CANADIAN PACIFIC R. C. v. PARKES ET AL.

Practice -- Right to jury -- Rules 81, 329, 330, 333 and 334.

This was an appeal by the defendants from an order of the Local Judge of the Supreme Court at Vancouver refusing a jury. The action was one for a perpetual injunction restraining the defendants from using, or using in such a negligent way as to damage the plaintiffs' railway, water conducted on defendants' farm for irrigation purposes.

Held, that as the case in question was such a one as most probably would call for a view, and a view by a judge was unsatisfactory, and upon consideration of the facts at issue upon the pleadings, a proper discretion to be exercised would be to set aside the order appealed from and direct that the trial be had with a jury.

Appeal allowed with costs.

Davis, Q.C., for plaintiffs.

McPhillips, Q.C., for defendants.

WALKER, J.]

[Jan. 22.]

POSTILL ET AL. v. TRAVES.

Jurisdiction of local judge of the Supreme Court -- Rule 1075 -- Rule of 16th December, 1892 -- Supreme Court Amendment Act, 1894.

By Rule of 16th December, 1892, made under 1891, c. 8, and published in *B. C. Gazette* for 1892, at page 1230, it is provided that "Until further order the Local Judge of the Supreme Court of British Columbia for the County Court District of New Westminster shall, within his territorial jurisdiction, in any action, suit, matter or proceeding in the Supreme Court, have and be possessed of the same powers and jurisdiction as are now or can hereafter be exercised by any Judge of the Supreme Court of British Columbia."

By s. 2 of the Supreme Court Amendment Act, 1894, the territorial juris-