

C.J.K.B., *held*, that sec. 16 of the Execution Act, 9 Edw. VII. c. 47 (Ont.) was constitutional and dismissed an action brought for a declaration that the assignments of certain patents of invention were of no effect. *Felt Gas Compressing Co. v. Felt* (1913), 25 O. W. R. 723; 5 O. W. N. 821.

PAYMENT.

Out of Court—*Money paid in by mortgagee—Surplus proceeds of mortgage sale—Notice—Personal service—Service by publication.*]—Britton, J., *held*, that where money had been paid into Court under an order of the Master, directing that notice be given to the execution creditors such money would be paid out upon the application of one of said creditors until the other had been notified. *Weber v. Morris* (1913), 25 O. W. R. 123; 5 O. W. N. 166.

PLEADING.

Defence to counterclaim—*Embarrassing paragraphs—Motion to strike out—Leave to amend.*]—Holmsted, K.C., struck out certain paragraphs of a joinder of issue intended as a defence to a counterclaim which set up no real defence to the allegations therein contained. *Mitchener v. Sinclair* (1913), 25 O. W. R. 296; 5 O. W. N. 347.

Motion to strike out statement of claim—*Action for libel—Plaintiff member of class—Right to sue—Alleged misjoinder—Time to plead—Costs.*]—Kelly, J., refused to strike out a statement of claim in a libel action, holding that a member of a class can sue on behalf of the class, if defamed.—*Le Fanu v. Malcomson*, 1 H. L. C. 637, and *Albrecht v. Burkholder*, 18 O. R. 287, followed. *Cooper v. Jack Canuck Publishing Co.* (1913), 25 O. W. R. 47; 5 O. W. N. 66.

Particulars—Alimony action—Party not obliged to get particulars from an examination for discovery.]—Holmsted, K.C., *held*, that it is no answer to a demand for particulars of a pleading to suggest that the other party can get the information desired from an examination for discovery. *Love v. Love* (1913), 25 O. W. R. 278; 5 O. W. N. 345.

Particulars—Statement of claim—Fatal Accidents Act—Plaintiff's son

killed by derailment of train—Residence of plaintiffs out of jurisdiction—Knowledge by defendants of facts—Res ipsa loquitur—Order for particulars oppressive—Particulars of damages impossible—Order set aside.]—Middleton, J., set aside an order for particulars in an action for alleged negligence of defendants causing the death of plaintiff's son by reason of the derailment of defendants' train, holding that where the plaintiffs resided in Ireland and the facts were within the knowledge of the defendants an order for particulars of negligence was oppressive and an abuse of the practice and that particulars of damage under the Fatal Accidents Act were unheard of and impossible to give. *Mulvenna v. Canadian Pacific Rv. Co.* (1913), 25 O. W. R. 675; 5 O. W. N. 779.

Statement of claim—Material variation from endorsement on writ of summons—Addition of foreign executors as defendants—Attornment to the jurisdiction—Judicature Act, 1913, s. 16 (h)—Rule 109.]—Holmsted, K.C., *held*, that where subsequent to the appearance to the writ of summons certain foreign executors had become parties to the action and attorned to the jurisdiction and the plaintiff had thereupon materially changed his claim in his statement of claim from that set out in the writ of summons, he was entitled under the Rules to do so. *Snider v. Snider* (1913), 25 O. W. R. 286; 5 O. W. N. 325.

Statement of claim—Motion for particulars—Paragraph irrelevant—Particulars refused—Costs.]—Holmsted, K.C., *held*, that particulars should be refused of an irrelevant allegation in a pleading.—*Cave v. Torre*, 54 L. T. 515, followed. *McVeity v. Ottawa Citizen Co.* (1913), 25 O. W. R. 200; 5 O. W. N. 237.

Statement of claim—Order striking out portions and for particulars of other portions—Appeal.]—Britton, J., in Chambers, sustained an order of the Master in Chambers directing that certain words and passages in a statement of claim should be struck out, and ordering certain particulars to be given by plaintiff to defendant. *Scully v. Nelson* (1913), 25 O. W. R. 120; 5 O. W. N. 164.

Statement of defence—Leave for amendment by defendant—Otherwise judgment for plaintiff.]—Steinberg v. Abramovitz (1913), 25 O. W. R. 89; 5 O. W. N. 107.