

Upon an application to set aside the writ of summons and the service thereof upon the defendant transferee out of the jurisdiction,

*Held*, that the action was founded on a "tort committed within the jurisdiction," within the meaning of Rule 271 (e), as amended by Rule 1309.

*Per* BOYD, C.: A restricted construction ought not to be given to the language of the Rule. The ground of complaint rests on statutable tort; the method of investigation is accidental.

*Per* MEREDITH, J.: Substantially the Act is in trover. Under the statute the transaction, as alleged by the plaintiff, is avoided; the goods become, and the proceeds of them are, the property of the plaintiff, and this defendant has converted them to her own use.

*R. McKay* for the plaintiff.

*W. E. Middleton* for the defendant Dupré.

C. P. Div'l Court.]

[June 7.

WESTERN BANK OF CANADA *v.* COURTEMANCHE.

*Stay of proceedings—Motion to set aside judgment—Divisional Court.*

When a motion to a Divisional Court to set aside the judgment pronounced at the trial, but not yet entered has been set down for hearing, there is a stay of proceedings upon such judgment *ipso facto*, unless it should be otherwise ordered.

*C. E. Hewson* for the plaintiff.

*D. O. Cameron* for the defendant Courtemanche.

Q.B. Div'l Court.]

[June 13.

GENERAL ELECTRIC CO. *v.* VICTORIA ELECTRIC LIGHT CO. OF LINDSAY.

*Pleading—Cross-counterclaim—Striking out—Cross-relief under Rule 374—Action on promissory note—Defence—Counterclaim—Parties—Rule 376.*

*Held*, affirming the decision of MEREDITH, J., 16 P.R. 476, that a person brought into an action as defendant to a counterclaim delivered by the original defendant cannot deliver a counterclaim against such defendant.

*Street v. Gover*, 2 Q.B.D. 498, followed.

*Seem*, if the company brought in here as defendants by counterclaim had been proper parties, cross-relief might have been given them, under Rule 374, by staying execution upon any judgment recovered against them until they should establish their set-off in an independent action.

The action was upon a promissory note. The counterclaim of the original defendants alleged that the plaintiffs took the note under circumstances which disentitled them to recover.

*Held*, a defence and not a counterclaim.