

If it is appealable, the matter certainly should be dealt with by a higher Court.

In any event there is great hardship in the case. The plaintiff is said to owe the defendants \$1,200 for taxed costs of a former action for libel. The present one not being for the same cause of action, this fact does not afford ground for an application for security.

If such a condition of affairs is likely to recur, it would seem to call for a further amendment of the law.

MASTER IN CHAMBERS.

OCTOBER 13TH, 1909.

ROBINSON v. CANADIAN PACIFIC R. W. CO.

Third Parties—Claim for Indemnity—Trial of Issue.

Motion by the defendants for an order for directions for trial of the issue between the defendants and third parties.

The plaintiff was admittedly injured on the defendants' line, but was travelling on a pass as being in charge of horses shipped by Burns & Sheppard, the third parties.

G. A. Walker, for the defendants.

G. R. Geary, K.C., for the plaintiff.

W. R. Smyth, K.C., for the third parties, submitted that the order should be discharged.

THE MASTER:—The order was granted on account of the usual clause in the contract between the defendants and the shippers that if the shipper or any nominee was allowed to travel at less than full fare, this should free the defendants from any liability for death or injury to any one so travelling, even in case of negligence of the company's servants. The defendants submit that this condition frees them for liability to the plaintiff, and that the third parties are liable to indemnify the company as against such claim by their nominee, even if he is held entitled to recover.

This seems a case for the matter to be tried out. It is not like *Mahoney v. Canada Foundry Co.*, 12 O. L. R. 514, or *Donn v. Toronto Ferry Co.*, 7 O. W. R. 154, but arises under an express contract. If the shippers were agents for others, they can bring them in as fourth parties, if so desired.

The usual order will go for trial. Costs of this motion to the plaintiff in any event, and in the third party issue as between the parties thereto.