

*Held*, that in taxing costs under this direction the officer was in error in disallowing to the defendants the costs of witnesses called to show the value, etc., of the extras that had been disallowed to them by the architect's certificate, which was attacked by the plaintiff. The defendants were not called upon to stand upon a single item of evidence, though in the end it might appear that the item would have been sufficient for their purposes.

*E. G. Rykert*, for the plaintiff.

*Aylesworth*, Q.C., for the defendants.

[Sept. 18.]

FERGUSON, J.]

PIPER *v.* BENJAMIN.

*Notice of trial—Irregularity—Close of pleadings.*

A pleading in reply, which was more than a simple joinder of issue, was served by the plaintiffs on the 30th June, 1896. No further or other pleading having been delivered and no extension of time for further pleading having been granted, the plaintiffs, on the 4th September, 1896, between three and four in the afternoon, served a notice of trial for the 14th September, 1896.

*Held*, irregular.

*S. W. McKeown*, for the plaintiffs.

*J. B. Holden*, for the defendant.

[Sept. 26.]

ROBERTSON, J.]

IN RE CANADIAN PACIFIC R. W. CO. AND CARRUTHERS.

*Interpleader—Bailees—Right to order—Inability to deliver specific property—Claim for unliquidated damages.*

Where grain was shipped over a railway under a contract which provided that it might be deposited in the railway company's elevators, in common with other grain of like grade, and at its destination was claimed by the indorsee of the bill of lading, and also by an investment company claiming under a mortgage from the shipper, an interpleader order was made, upon the application of the railway company as carriers or bailees, notwithstanding that the specific grain could not be delivered, owing to its having been mixed with other grain in the elevator, as permitted by the contract, and notwithstanding that the investment company's claim was, as contended, one for unliquidated damages for conversion of the grain.

*Attenborough v. St. Katharine's Dock Co.*, 3 C.P.D. 450, followed.

*Aylesworth*, Q.C., for the railway company.

*Marsh*, Q.C., for the claimant Harris.

*C. W. Kerr*, for the claimants, the Scottish American Investment Co'y.

[Oct. 3.]

MACLENNAN, J.A.]

GRAHAM *v.* TEMPERANCE AND GENERAL LIFE ASSURANCE CO.

*Appeal—Court of Appeal—Judgment on preliminary issue—Order of Divisional Court—Leave to appeal—Judicature Act, 1895, ss. 72, 73.*

Having regard to the provisions of secs. 72, 73 of the Judicature Act, 1895, an appeal lies to the Court of Appeal, without leave, from the judgment upon the