

BRITTON, J.:—At the close of the trial I gave judgment dismissing the action with costs, but reserved the question of costs of third party proceedings. There was a third party notice served upon W. H. Mahon, who, it is said, sold the horse in question to defendant. Mahon appeared and did not admit his liability. Thereupon defendant obtained an order from the local Judge at London for the trial of the question of liability of the third party for indemnity, contribution, and relief over, to defendant, at the time of and at the trial of this action. . . .

There was no trial of any question of liability as between plaintiffs and third party or as between defendant and third party. Plaintiffs should not, in my opinion, be liable for third party costs. Plaintiffs' claim to the horse was not dependent upon or affected by the dealings between defendant and third party, except as to the question of credibility of third party, which had to be dealt with in determining the question between plaintiffs and defendant.

It appeared in evidence that there were, in regard to the horse in question and otherwise, very intimate and confidential relations between defendant and third party. Upon the whole case, and in the exercise of my discretion, I think the third party should not get costs, and that defendant should not get any costs of bringing third party in. See *Re Salmon*, *Prest v. Appleby*, 42 Ch. D. 358.

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RIDDELL, J.

JUNE 8TH, 1907.

TRIAL.

BURROWS v. ALLEN.

*Will—Construction — Devise — Life Estate to Widow with Power of Appointment by Will—Power of Sale given to Executors with Consent of Widow—Quit Claim by Executors to Widow—Conveyance by Widow to Child—Will of Widow—Consent Shewn by Acceptance of Quit Claim—Conveyance of Widow's Estate in Another Parcel—Exercise of Power of Appointment—Partition.*

Action for partition or sale of lands in the city of Ottawa.

R. J. McLaughlin, K.C., for plaintiff.

A. F. May, Ottawa, for defendant.