

latter objection, and a majority of the members agreed with the former ruling.

Held, that the defendant had failed to shew such special circumstances as must be shewn in a case of this nature. The verdict was small, and the jury seemed to have arrived at it upon a charge to which the only exception now urged was the above, and, if the judge erred in not passing over any reference to the Gummer case, there was nothing to shew that any substantial wrong was occasioned by it. On the other ground the weight of authority was against the proposition that a defendant in a libel action may set up in mitigation of damages acts and doings of the plaintiff arising long after the alleged libel, and not having reference to it. Here, however, the matter was to some extent one of the exercise of discretion by the trial judge, and leave to appeal against that ought only to be given in exceptional cases. Motion refused.

Riddell, K.C., for defendant. *J. J. Drew*, for plaintiff.

MacLennan, J. A.]

BODINE *v.* HOWE.

[Feb. 22

Appeal—Extension of time for—Application to opposite solicitor—Unreasonable refusal—Costs—Rules 799, 801.

Rules 799 and 801, prescribing the times for filing and serving notice of appeal and serving the appeal case, enable the appellant, whenever necessary, to obtain further time from the court or judge; and that being so, the solicitor requiring further time should, in general, before applying to the Court, apply to the solicitor for the respondent, explaining the occasion for it, and the latter ought, in every proper case, to grant the request; any other course of conduct only occasions unnecessary and useless costs.

And where application for an extension was made to the solicitor, and, in the opinion of the judge who heard a motion to extend the time, unreasonably refused, an order was made extending the time and staying execution, without costs to the respondent.

R. U. Macpherson, for appellant. *Hellmuth*, for respondent.

HIGH COURT OF JUSTICE.

Falconbridge, C.J., Street, J.]

[Jan. 14

PHILLIPS *v.* THE GRAND TRUNK RAILWAY CO.

Railways—Walking between rails—Negligence.

Plaintiff was walking between the rails of the defendants' tracks in a station yard, and was run down and injured by a reversed engine and tender.

Held, that even if the defendants were guilty of negligence in not giving notice that the engine and tender were in motion, as there was a