

*Held*, that "done under this Act" means "intended to be done under this Act," and the defendant, not appearing to have acted *mala fide* or to have intended not to perform his duty under the Act, was entitled to the protection of the above section, though he had not pleaded the general issue in terms, inasmuch as he had in effect stated that what he did was done under this Act.

*Nesbitt & Ball* for the plaintiff.

*Blackstock & Watts* for the defendant.

Mr. DALTON.]

[Feb. 4.]

DENHAM v. GOOCH.

*Dismissing action—Non-attendance of plaintiff for examination—Unmeritorious action—Security for costs—Former action for same cause by another plaintiff.*

Upon a motion to dismiss the action for the plaintiff's non-attendance to be examined for discovery pursuant to appointment, the plaintiff offered to submit herself for examination at any time at her own expense. The Master in Chambers, nevertheless, dismissed the action with costs, the plaintiff's claim not being, in his opinion, an honest or fair one.

The plaintiff sued, as lessee from her brother of certain goods, for damages for illegal distress. An action had been previously brought by her brother in respect of the same distress against the same defendant, and had been dismissed. *Seem*, that under these circumstances security for costs might be ordered.

*A. W. Burk* for plaintiff.

*H. H. Macrae* for defendant, Gooch.

Q.B. Div'l Ct.]

[Feb. 5.]

MILLIGAN v. SILLS.

*Venue—Change of—Preponderance of convenience—County Court action—Appeal from Master in Chambers—Rule 1260—Appeal to Divisional Court.*

*Held*, by the Divisional Court upon appeal from the decision of ROSE, J., ante p. 90, that the venue was properly changed to Napanee, and that even if an appeal did not lie from the Master in Chambers to a Judge in Chambers under Rule 1260, the latter had the right, as upon a substantive application, to make the order which the Master refused.

As the appeal to the Divisional Court was dismissed upon the merits, no opinion was expressed as to whether such appeal lay.

*Hilton* for the plaintiff.

*Aylesworth* for the defendant.

ROSE, J.]

[Feb. 5.]

MEAD v. TOWNSHIP OF ETOBICOKE.

*Indemnity—Question between co-defendants—Order directing determination of—Application for, after judgment—Con. Rule 328.*

The plaintiff sued a municipal corporation and a railway company for damages; the corporation in their statement of defence claimed indemnity or relief over against the company, but the company did not answer the pleading, and no order was made or applied for before or at the trial to have the question determined; judgment was given for the plaintiff against the corporation, but not either in favour of or against the company.

After the judgment had been affirmed by a Divisional Court, the corporation applied to the trial judge for an order under Rule 328 to have the question between them and the company determined.

*Quere*, whether there was power under the Rules to make the order; and

*Held*, that, if there was power, it would not be a wise exercise of discretion to make it; for new pleadings and a new trial would be necessary, and it would be better that a fresh action should be brought than that the plaintiff should be kept before the Court while the defendants settled their dispute.

*McMichael*, Q.C., for defendants, Township of Etobicoke.

*McCarthy*, Q.C., for defendants, G.T.R. Co.

ROBERTSON, J.]

[Feb. 8.]

RAYMOND v. LITTLE.

*Masters and referees—Reference under sec. 101 of the Judicature Act—Report—Confirmation—Motion for judgment—Rules 753, 848.*

Where the Court at the trial of a partnership action after declaring that a partnership existed and ordering that it be dissolved and wound up, ordered that all other matters in dispute in the action be referred for inquiry and report to a Master, under s. 101 of the Judicature Act,