

was no lever on the end of the car next the tender, and that the plaintiff, in order to uncouple, had to reach in between the ends of the cars in an effort to pull out the coupling pin. In so doing he either tripped or was knocked down and had an arm cut off by the wheels of the tender.

Held, that, in view of the requirement in sub-s. (c) of s. 264 of the Railway Act, R.S.C. 1906, c. 37, that all cars should be equipped with apparatus which shall prevent the necessity of brakemen going in between the ends of the cars to uncouple, the plaintiff had made out a prima facie case of negligence, and that the nonsuit entered at the trial should be set aside, and a new trial granted. Costs of the former trial and of the appeal to be costs to the plaintiff in any event of the cause.

The trial judge had made an order that, if a new trial should be granted by the Court of Appeal, then in the event of either of the plaintiff's witnesses being out of the country, he should have the right to read the evidence such witness had given at the trial on the case coming up for trial again, and the court ordered this provision to be embodied in the judgment.

MacNeil, for plaintiff. *Curle*, for defendant.

Full Court.]

MCGREGOR v. CAMPBELL.

[June 14.

Set-off—Counterclaim—Assignments Act—Right of action for damages—Solicitor's lien for costs—King's Bench Act, s. 39(e), rule 293.

Plaintiff sued for damages for deceit upon the sale by defendant to him of a business fraudulently represented to be of much greater value than it was. Defendant counterclaimed for the balance of the purchase money.

After the trial, but before judgment, plaintiff made an assignment for the benefit of his creditors under R.S.M. 1902, c. 8, and the assignee was added as a co-plaintiff.

In giving judgment the trial judge awarded \$750 damages to the plaintiff with the costs of the action, but he found also that the defendant was entitled to recover a much larger sum on his counterclaim, which was not disputed. The judge also ordered a set-off and that judgment be entered for defendant for the balance and refused to allow the plaintiff's solicitor any lien for costs.

Held, on appeal, HOWELL, C.J.A., dissenting, that the plaintiff's claim against the defendant did not pass to the assignee by virtue