

unaccounted for, and which the Chief Justice reduced by \$3,000, should not be disturbed.

W. R. Riddell, K.C., and C. A. Masten, for defendant, also appealed from the order. The \$3,000 allowed by the Master against defendant, and the \$1,000 known as the German note should not be allowed.

The Court, composed of OSLER and MACLENNAN, J.J.A., (LISTER, J.A., having died after the argument and before judgment) allowed the appeal as to promissory notes and dismissed it as to items of \$4,751 and \$2,063.03. Plaintiff to have three-quarters of the costs of his appeal. The cross-appeal was dismissed with costs and judgment in other respects affirmed. It was stated that LISTER, J.A., had come to a similar conclusion.

Deroche & Madden, Napanee, solicitors for plaintiff.

Herrington & Warner, Napanee, solicitors for defendant.

BRITTON, J.

MARCH 10TH, 1902.

CHAMBERS

GEARING v. MCGEE.

Pleading—Amendment—Attaching Order—Defence of.

The plaintiff in a former action sued the defendants and one Robinson to enforce a mechanic's lien (see 27 A. R. 364). The plaintiff's action was dismissed as against the owners, the McGees, but his lien was declared against the interests of the Robinsons in the property. In the former action the McGees gave an indemnity to the Robinsons to protect them against liens. This indemnity was subsequently assigned to the plaintiff Gearing, who now brings this action upon it. After judgment in the former action and taxation of costs against Gearing, the McGees obtained a garnishment order attaching all moneys in the hands of Robinson and others, of Gearing, to answer the costs due the McGees by Gearing. In this action by Gearing upon the indemnity thus assigned to him, the Master in Chambers gave the defendants the McGees liberty to set up, as a defence, the above garnishment order.

The plaintiff appealed.

J. E. Jones, for plaintiff.

W. N. Ferguson, for defendant.