

represented upon the settling of it, and took no steps to correct the error until some months afterwards, when his goods were seized under an execution for the costs.

*Held*, upon a motion to amend or vary the order as to costs, that the Court, in the exercise of its inherent powers over its records, or the powers conferred by Rule 780, could correct an error arising from an accidental slip or omission in its order; and could now make the order as to the applicant's costs, which would have been made originally had attention been called to his position and the nature of his defence.

*Held*, also, that he was entitled to relief under Rule 536, as amended by Rule 1454, as a party who, through mistake, has not been represented upon the argument of the appeal.

*Held*, also, that the carelessness and delay of the applicant did not disentitle him to relief, though they afforded ground for imposing terms upon him. And the Court, being of opinion that his defence was sustained by the evidence at the trial, amended the order by excluding him from the direction as to payment of the plaintiff's costs by all the adult defendants, and by inserting a provision that the Court did not see fit to make any order as to his own costs, upon payment by him of the costs of the application and the sheriff's fees, and upon his undertaking to bring no action against the plaintiff or the sheriff for anything done under the execution.

*Masten*, for the applicant.

*W. R. Riddell*, for the plaintiff.

From STREET, J.]

FAULKNER v. CLIFFORD.

[Jan. 12.

*Jury—Findings—Failure to answer question—Effect of—Judgment—New trial—Right to, without motion for.*

At the trial of an action for negligence, causing the death of a servant of the defendants, the jury, in answer to questions, found that the defendants were guilty of negligence which caused the accident, and assessed the plaintiff's damages, but disagreed as to and did not answer a question put to them as to whether the deceased, with knowledge of the danger, voluntarily incurred the risks of the employment.

*Held*, that judgment could not, under these circumstances, be entered either for the plaintiffs or the defendants.

Decision of STREET, J., affirmed.

*Held*, also, that as soon as a judgment was given, to which both parties yielded, no judgment could be given for either of them on the findings. There was an end of the trial, and either party was at liberty to give a new notice of trial and again to enter the action for trial, as upon a disagreement of the jury, without moving to set aside the findings and for a new trial.

Decision of STREET, J., reversed.

*McDermott v. Grout*, 16 P.R. 215, approved.

*Stevens v. Grout*, ib., 210, overruled.

*McBrayne*, for the appellants.

*Lynch-Staunton*, for the respondents.