

The first appellant's notion for payment out being dismissed with costs to the other appellant, and it appearing that by the judgment appealed against the first appellant was entitled to be indemnified by the other against all amounts payable by the first under the judgment, and to recover from the other any amount so paid and his costs of the action, etc.

Held, that the costs of the motion should be set off against anything the first appellant might already have paid, or might ultimately have to pay under the provisions of the judgment referred to, as the result of the appeal.

Held, under the circumstances of the case, that the appeal would be more expensive than usual, and that the security should be increased to \$400; but that upon the true construction of Rule 830, sub.-ss. 1, 4, 8, where security is given by payment into Court, it cannot be increased to more than \$400.

Middleton, for plaintiffs. *W. H. Blake*, K.C., and *C. W. Kerr*, for defendant Hill. *Raney*, for defendant Love.

HIGH COURT OF JUSTICE.

Divisional Court]. REX v. JAMES. [July 18.

Fruit Marks Act, 1891, 1 Edw. VII., c. 27 D.—Fraudulent packing—Possession for sale—Faced or shewn surface—Meaning of.

The mere having in possession packages of fruit fraudulently packed, such possession being for the purpose of sale, is an offence under s. 7 of the Dominion Fruit Marks Act, 1891, 1 Ed. VII., c. 27, it being immaterial that no one was imposed on, and no fraud intended by the person charged with the offence.

"The faced or shewn surface" of the package is not limited to the branded end, but applies to any shewn surface thereof.

J. D. Montgomery, for defendant. *R. B. Beaumont*, contra.

Street, J., Britton, J.] [Sept. 17.

MERCHANTS BANK v. SUSSEX.

Ca. sa.—Issue of concurrent after expiry of original—Con. Rule 874—Motion for discharge from custody—Appeal from discretion of Judge—Discretion of Divisional Court.

A concurrent writ of ca. sa. should not be issued after the original writ with which it is concurrent has expired by lapse of time under Con. Rule 874, and will be set aside as having been improperly issued.