

relief over; and Rules 328 and 330 did not apply because it was not shown to be necessary or expedient to decide any question in the action as between the original parties, or either of them, and the third parties.

*Per* MACLENNAN, J.A.: The question in the action, so far as title is concerned, is whether the plaintiffs have such a title as the court will compel the defendant to accept. If they clearly have such a title, they will succeed; if they clearly have not, they will fail; and if doubtful, the action will be dismissed. In any case there is no occasion for deciding anything as between either of the original parties and the third parties.

The Consolidated Rules relating to third parties discussed.

*Glenn* for the plaintiffs.

*J. A. Robinson* for the defendant.

MEREDITH, J.]

[Jan. 21,

IN RE MCKENZIE.

IN RE LIND.

IN RE CAMPBELL.

*Lunatics—Maintenance of—Inspector of prisons and public charities—Money in court—R.S.O., c. 245, ss. 1, 48, 49, 61.*

Sections 48 and 49 of the Act respecting Lunatic Asylums and the Custody of Insane Persons, R.S.O., c. 245, providing that the inspector of prisons and public charities may take possession of the property of lunatics to pay for maintenance, do not apply to money in court.

Where the property of the lunatic is money in court, the inspector must apply for payment out under s. 61, and must show clearly that the person to whom the money in court belongs is a lunatic and that the purpose for which the money is sought is to pay charges for maintenance of the lunatic in a public asylum; but it is not necessary, having regard to s. 1, s-s. 2, that the person shall have been, or shall be, declared a lunatic.

*J. F. Edgar* for the inspector.

*E. W. Harcourt* for the official guardian.

Court of Appeal.]

[Feb. 1.

PEER v. NORTHWEST TRANSPORTATION CO.

*Venue—Change of—Rule 653—Preponderance of convenience—Discretion—Leave to appeal.*

The question of changing the venue is to a great extent a matter of discretion. The present Rule 653 has not made any substantial change in the practice; and an overwhelming preponderance of convenience in favor of a change is still necessary.

*Shroder v. Meyers*, 34 W.R. 261; *Power v. Moore*, 5 Times L.R. 586; and *Briden v. Duncan*, 7 Times L.R. 515, referred to.

But where the venue had been changed by the Master in Chambers, affirmed by a Judge in Chambers and a Divisional Court, the Court of Appeal, though not satisfied that there was an overwhelming preponderance of convenience in favor of a change, refused to interfere with the discretion exercised by granting leave to appeal.

*George Bell* for the plaintiffs.

*Douglas Armour* for the defendants.

Q. B. Div'l Court.]

STRATFORD GAS CO. v. GORDON.

*Pleading—Rule 423—"Embarrassing," meaning of—Allegations of facts showing probability of truth of pleading—Evidence—Duty of trial judge—Summary application to strike out pleadings—Unnecessary allegations—Verbosity—Discretion.*

The plaintiffs were a gas company doing business in a city, and distributing gas by their mains throughout the city; the defendant was also the owner of gas works in the same city, from which he supplied certain buildings in the city. The statement of claim charged that the defendant laid, or caused to be laid, a pipe to communicate with the pipe belonging to the plaintiffs, or in some way obtained or used the plaintiffs' gas without the consent of the plaintiffs; and claimed the penalty given by s. 3 of the Gas and Water Companies Act, R.S.O., c. 164, and also the value of the gas alleged to have been taken.

The defendant, in thirteen paragraphs of his statement of defence, set out at length various