

BRENNEN v. BANK OF HAMILTON—MASTER IN CHAMBERS—
OCT. 7.

Notice of Trial — Setting down for Trial — Invalidation by Subsequent Pleadings.]—Motion by the plaintiff to set aside the notice of trial and strike the action off the list of cases for trial, on the ground that the notice of trial and setting down had been invalidated by subsequent proceedings. The notice of trial was given by the defendants, and was regular when given, and the case was regularly set down. But subsequently, on the 20th September, an order was made allowing the plaintiff to amend by adding a new defendant and setting up fresh grounds of action. That order required the plaintiff to reply to the statement of defence of the added defendant and to any amended statement of defence of the other defendants within two weeks. The order was accepted by the parties. It made no mention of the notice of trial or of the setting down. Afterwards the solicitors for the two sets of defendants obtained orders amending their statements of defence. The Master gave effect to the plaintiff's contention, following *Confederation Life Association v. Labatt*, 18 P. R. 238, and made an order as asked, with costs to the plaintiff in any event. Grayson Smith, for the plaintiff. Britton Osler and C. W. Bell, for the defendants.

JOHNSTON v. THOUSAND ISLAND R. W. CO.—FALCONBRIDGE, C.J.
K.B.—OCT. 8.

Railway—Injury to Person at Crossing—Dangerous Place—Negligence—Findings of Jury—Amendment.]—Action to recover \$5,000 damages for the death of Jessie Johnston, at the railway crossing in Gananoque, through the negligence of the defendants, as alleged. The Chief Justice said that the situation and the locus presented unusually dangerous conditions. The jury's findings were on every point in favour of the plaintiff, and he was entitled to judgment. The facts not being in dispute, and the jury having based a finding thereon, the plaintiff should be allowed to amend the statement of claim by adding, at the end of the first sentence of paragraph 5, the words "and in not bringing the train to a standstill on the west side of King street." Judgment for the plaintiff for \$3,000, as apportioned by the jury, and costs. J. L. Whiting, K.C., and J. A. Jackson, for the plaintiff. G. H. Watson, K.C., and W. B. Carroll, K.C., for the defendants.