

applied, first, in payment of creditors; next, in payment of the sum found due the successful party; and lastly, in payment of the costs of both parties.

Hainer v. Giles, 11 Ch. 942, followed.

The fact of a balance being found due by one partner to the other is no reason for departing from the ordinary rule as to costs.

John Greer for the plaintiff.

Hislop for the defendant.

C. P. Div'l Court.] [March 6.

CAMPBELL v. SCOTT.

Discovery—Examination of defendant before statement of claim—Slander—Rule 566.

In actions of slander when the court is satisfied of the *bona fides* of the plaintiff, and is convinced that he cannot state fully and with sufficient particularity his various grounds of complaint, and when the knowledge required is within the possession and control of the defendant, an examination for discovery before statement of claim will be ordered, under Rule 566; but in such case a further examination after pleading will not be allowed except upon special grounds.

Fisken v. Chamberlain, 9 P.R. 283; *Gordon v. Phillips*, 11 P.R. 540; *McLean v. Barber*, 13 P.R. 500, followed.

Aylesworth, Q.C., for the plaintiff.

Shepley, Q.C., for the defendant.

STREET, J.] [March 13.

FLETT v. WAY.

Set-off—Rule 375—Rule 1205—Solicitor's lien—Counter-claim.

This was an action brought by a tenant against his landlord (W.), a contractor (S.), who had made alterations in the premises formerly occupied by the tenant, and the agent (L.), who collected the rent, for \$1,000 damages for wrongful entry, etc., and was tried by STREET, J., and a jury.

A verdict was rendered on the claim against W. only, for \$104 damages, and on W.'s counter-claim against the plaintiff for \$104 overdue rent.

The entry of judgment was deferred till this day, when counsel for the defendant W. moved to set off the debt recovered on the counter-claim against the damages recovered on the claim, relying on Consolidated Rule 375. The plaintiff was admitted to be worthless. His counsel contended that Rule 375 must be read

with Rule 1205, and was limited by it, and objected that the Court had no jurisdiction to direct a set-off, the effect of which would be to prejudice the lien of the plaintiff's solicitors for costs, and cited the English cases, and also read an affidavit of the plaintiff's solicitor claiming a lien. Counsel for the defendant replied that all the cases referred to as having been decided under Rule 1205 were cases in which a set-off had not been directed, and decided only that in construing a judgment where a set-off had not been directed the same would not be allowed to the prejudice of the solicitor's lien, and cited the dictum of OSLER, J., in *Brown v. Nelson*, 11 P.R., at p. 125.

Held, that the damages recovered by the plaintiff be set-off against the debt recovered by the defendant W., and that no execution be issued by either party against the other for such damages or debt.

W. D. McPherson for defendant W. for the motion.

F. E. Titus for the plaintiff, contra.

SIXTH DIVISION COURT, COUNTY OF ONTARIO.

DARTNELL, JJ.] [March 19.

GATTIE v. OVEREND.

Poundkeeper—Running at large—R.S.O., c. 215, s. 3.

To justify a sale of animals under a pound by-law, they must be "unlawfully running at large," and also "delivered to the poundkeeper for the purpose of impounding." Where, therefore, two sheep, found in the highway, were driven to the yard of the defendant, who was an innkeeper and also a poundkeeper, on the supposition that they belonged to a cattle-dealer accustomed to use the yard for the purpose of herding, and were, on discovering that they belonged to the plaintiff, held by the defendant as poundkeeper, and subsequently sold

Held, that the animals were not "unlawfully running at large," nor were they "delivered to the poundkeeper for the purpose of impounding" within the meaning of R.S.O., c. 215, s. 3; that they were detained by the defendant in the capacity of a gratuitous bailee and not as a poundkeeper; that the sale was illegal, and, under all the circumstances, that the poundkeeper acted maliciously.