

finding the annual reports of the company misleading applies after notice for a writ of injunction to restrain the company from paying a dividend and where, upon such application the company do not deny even generally the statements and charges contained in the plaintiff's affidavit and petition, there is sufficient probable cause for the issue of such writ, and consequently the defendant, who upon the merits has succeeded in getting the injunction dissolved, has no right of action for damages resulting from the issue of the injunction.

Per TASCHEREAU, J.:—Where a party maliciously and without reasonable and probable cause has instituted civil proceedings against another, the latter has a right of action for damages resulting from such vexatious proceedings. *Brown v. Gudy*, 16 L. C. Jur. 227, approved of.

Appeal dismissed with costs.

*Geoffrion*, Q.C., and *Abbott*, Q.C., for appellants.

*Loneragan* and *Lafleur* for respondents.

SCAMMELL v. JAMES.

*Appeal—Jurisdiction—Security for costs—Benefit of bond for—Practice.*

S. brought an action by writ of *capias* in the Supreme Court of New Brunswick against J., who was arrested and gave bail. By the practice in bailable actions in that Province it was necessary for the defendant to enter into special bail within a specified time after his arrest, and judgment must be entered within a specified time after such special bail is entered into. The plaintiff delayed signing judgment, and on application to a Judge in Chambers an order was made discharging the bail and directing an *exonoretur* to be entered on the bail bond. On motion to the full Court this order was sustained and the plaintiff appealed to the Supreme Court of Canada. The proceedings in the Court below and on appeal were in the original suit against J., and the bond for security for costs was made in favor of J.

*Held*, that the bail, the parties principally interested in the appeal, not being entitled to the benefit of the security for costs, the appeal could not be entertained for want of security, and the time for giving security having elapsed, the defect could not be remedied.

*Held* also, that the matter was one of the

practice of the Court below and on that ground not appealable.

*McLeod*, Q.C., and *C. A. Palmer* for the appellants.

*I. A. Jack*, Recorder of St. John, for the respondent.

WHITE v. PARKER.

*Appeal—Jurisdiction—Death of plaintiff—New cause of action—Lord Campbell's Act—Actio personalis moritur cum persona.*

P. brought an action against a railway conductor for injuries received in attempting to board a train. He was non-suited on the trial of the action, and the Supreme Court of New Brunswick set aside the non-suit and ordered a new trial. Between the verdict and the judgment of the Court below P. died, and a suggestion of his death was entered on the record in the Court below. On appeal to the Supreme Court of Canada from the judgment ordering a new trial,

*Held*, that by the death of P. a new cause of action arose, under Lord Campbell's Act, in favor of his widow and children and the original action was, therefore, entirely gone and could not be revived. There being, therefore, no cause before the Court the appeal was quashed without costs.

*E. McLeod*, Q.C., for appellant.

*W. Pugsley* for respondent.

MCDONALD v. GILBERT.

*Partnership—Proof of—Names of parties on letter heads—Action for trifling amount.*

G. bought goods from a person representing himself as agent of a firm in Toronto, and the goods were sent from Toronto to G. at St. John, N.B. In order to get the goods G. was obliged to pay the freight, which he demanded from the firm, claiming that by his agreement with the agent he was to receive the goods at St. John on payment of the price. Some correspondence passed between G. and the firm, and letters were received by G. written on paper containing the name of the firm and under it the names of individuals. In an action by G. to recover the freight,

*Held*, affirming the judgment of the Supreme Court of New Brunswick, that the representation of the agent, coupled with the receipt of the