

under the third party procedure, and the plaintiff not being affected by the effect of the order upon the defendant's rights or remedies. *Paul v. Flinn*, (Ct. 1896), p. 406.

## POSTPONEMENT OF TRIAL.

See SALE OF LAND.

## PRACTICE.

**Practice—Pleading — Amendment of Statement of Claim at Trial—New Case—Application after Close of Defendant's Case Refused—Civil Justice Ordinance, section 164.**—In an action for damages for trespass and for an injunction, the statement of claim alleged that the defendant, who was in occupation of adjoining property which was being operated as a coal mine, had entered upon and under lots B and C owned by the plaintiff, and had removed coal and minerals therefrom. From the evidence for the defence it appeared that no excavations had been made on Lots B and C since the date trespass was alleged to have commenced, but that the defendant's tunnel had extended into other adjoining lands owned by the plaintiff in respect of which no complaint had been made. The plaintiff at the close of the defendant's case applied for leave to amend the statement of claim under section 164 of the Judicature Ordinance by alleging that the trespass had been committed upon these last mentioned lands:—Held, that the real controversy between the parties was whether the defendant had committed trespass upon lots B and C, and no amendment was necessary for the purpose of determining that question, and it would be an unreasonable exercise of the powers conferred by the section to allow the plaintiff after the close of the evidence to amend by setting up a new cause of action discovered from the evidence for the defence:—Held also, that a refusal by defendant to allow inspection by plaintiff of the workings of the mine was not sufficient reason for allowing the amendment as the defendant might have obtained an order for inspection. Greater latitude should be allowed to a defendant in amending by setting up new grounds of defence than to a plaintiff in setting up new causes of action, because a defendant cannot afterwards avail himself of such de-

fence, while a plaintiff does not lose his claim in respect of such cause of action. *Moran v. Graham* (Scott, J., 1896), p. 204.

**Practice—Application for Administration—Order to Render Proper Account under O. 55, R. 10 A. (Eng.)—Affidavit Verifying—Not Filed—Application to Cross-examine.**—Upon an application for administration an order was made under English O. 55, R. 10a, that the application stand over for six weeks, and that the defendant within one month render to the plaintiff a proper statement of his accounts and dealings with the estate, which was duly furnished and verified by affidavit. The plaintiff did not appear on the further hearing of the application, and some months had elapsed when this application was made to cross-examine the defendant on the affidavit:—Held, that as the affidavit was not filed when notice of the application was served, but only (if at all) by the plaintiff himself on the return, the application must be refused. *Quære*, whether the rule authorizes a direction that such accounts be verified under oath, and whether such an affidavit is an affidavit "used or to be used on any proceeding in the cause or matter." (J. O. 1893, sec. 261, now r. 282, J. O. 1898.) The proper practice in order to obtain explanations of any of the items of accounts so furnished seems to be to formulate objections on the further hearing and have the disputed items adjudicated upon in Chambers. *Allan v. Kennedy*. (Scott, J., 1895), p. 285.

**Security for Costs—Assets within the Jurisdiction — Substantial, not "Floating."**—Plaintiffs who were now residents had at the time of an application for security for costs, assets within the Territories to the amount of \$4,000, consisting of live stock and railway plant in use upon contract work for the Canadian Pacific Railway Company, in construction of the Crow's Nest Branch railway:—Held, that this property was not substantial and fixed, but floating, and an order for security for costs was made. *Dodge v. Town of Regina* (No. 1). (Richardson, J.), 1897, p. 329.

**Practice—Parties—Adding Defendant—Third Party Procedure — Action for Conversion—Application — Defendant to add Person on whose Behalf Seizure made Refused—Counterclaim—Judicature Ordinance.**—In an action