

The action will be dismissed but without costs. The claim of the defendant Whalen against the third party will be dismissed without costs. There will be no costs payable by plaintiff to Burrill Construction Co., but that company should be paid their costs, which I fix at \$20, out of the money in Court; \$10 out of the money belonging to the third party Niemi, and \$10 out of the money belonging to defendant Whalen. There will be no costs paid to or by the third party by reason of the application for, or third party order, or of the trial.

As the action is framed, I cannot deal with any claim by plaintiff against Niemi, but the judgment will be without prejudice to any action or proceeding by plaintiff against the third party, in reference to the piling, or any of it, mentioned in the alleged contract.

As to the \$819, money in Court, \$453 belonged to Niemi and the balance to defendant Whalen. Assuming that to be so, \$10, part of Burrill Construction costs should be deducted from each and \$443 paid out to Niemi, and \$356 paid out to defendant Whalen. If any dispute as to amount belonging to Niemi, the matter can be spoken to and determined on settling the minutes.

Thirty days' stay.

HON. MR. JUSTICE MIDDLETON.

JANUARY 6TH, 1914.

REX v. DAVEY.

5 O. W. N. 666.

Appeal—Leave to Appeal—Order Quashing Conviction — Amount Involved Trivial—Carelessness of Parties—Refusal of Application.

MIDDLETON, J., refused leave to appeal from an order quashing a conviction where the amount involved was trivial and the questions in dispute arose from the carelessness of the magistrate in neglecting to commit the terms of an understanding between the parties to writing.

Motion for leave to appeal from judgment of HON. MR. JUSTICE LENNOX, quashing a conviction, reported 25 O. W. R. 464. Argued 2nd January, 1914.