

The plaintiff also claims the right of passage by the culvert as an easement, by prescription, but Canadian Pacific R. W. Co. v. Guthrie, 31 S. C. R. 155, is decisive against that claim.

It was also, though but faintly, urged by Mr. Millar, that the defendants were prohibited by sec. 257 of the Railway Act of Canada from doing what they have done without the leave of the Board of Railway Commissioners for Canada; but, in my opinion, the section has no application to such a structure as the culvert in question, which is only eight or nine feet long, but in terms is confined to structures having a span or length exceeding eighteen feet.

I do not wish to be understood as meaning that, if the culvert were a structure such as those with which the section deals, the plaintiff would be entitled to recover, but as to that I express no opinion.

The action must be dismissed, but, under all the circumstances, I think I may exercise my discretion as to costs by dismissing it without costs, which I do.

SILL v. ALEXANDER—MASTER IN CHAMBERS—SEPT. 2.

Counterclaim—Exclusion—Action for Defamation—Unconnected Counterclaim on Bills of Exchange.]—Motion by the plaintiff in an action for defamation to strike out the defendant's counterclaim for a sum of \$3,072.80 in respect of bills of exchange of which the defendant was the holder and of a loan made to the plaintiff. The Master remarks that this is the converse case to *Central Bank v. Osborne*, 12 P. R. 160, and a stronger case striking out the counterclaim, because here there is no connection between the claim and counterclaim. Order made striking out the counterclaim, without prejudice to a fresh action being brought, in which case judgment should not be signed in this action without the order of the Court or a Judge. Costs in the cause. J. D. Montgomery, for the plaintiff. W. B. Raymond, for the defendant.

DURYEA v. KAUFMAN — MASTER IN CHAMBERS—SEPT. 14—
MIDDLETON, J.—SEPT. 20.

Security for Costs—Increased Security—Assets in Jurisdiction.]—Motion by the defendants for increased security for costs, \$400 having been paid into Court under præcipe orders. The Master referred to *Stow v. Currie*, 20 O. L. R. 353, and said that