

Practice.

Street, J.] [Dec. 11, 1888.

BURKE v. PITTMAN.

Indemnity—Relief against co-defendants—Procedure where such relief claimed—Trial of questions raised.

No order is necessary to enable a defendant to plead a claim for indemnity against his co-defendant, but such a claim will not be tried without an order providing for the determination of the question so raised.

P. borrowed money from the plaintiff and then went into partnership with N.; P. and N. afterwards sold the business to B. The plaintiff, having judgment against P., brought this action against P., N. and B., to set aside the sale to B. as fraudulent. P. alleged in his defence that N. agreed to pay half his debts, including that to the plaintiff, and that B. agreed to pay the liabilities of P. and N. appearing on their books, which the liability to the plaintiff did, and he claimed indemnity against N. and B.

Held, that the trial of the question whether or not the sale to B. was fraudulent as against the plaintiff, would involve an inquiry as to the terms upon which B. purchased from the other defendants, and that the whole matter was one that might be advantageously disposed of at one hearing.

Geo. Macdonald, for the plaintiff.

Geo. Ritchie, for the defendant P.

Gunther, for the defendants, N. and B.

Q.B. Div'l Ct.] [Dec. 22, 1888.]

SMITH v. FLEMING.

Costs—Covenant for renewal lease, construction of—Costs of lease—Costs of reference and award—Costs of action for arbitrators' fees.

The judgment of FERGUSON, J., 12 P.R. 520, affirmed on appeal, substantially on the same grounds.

Marsack v. Webber, 6 H. & N. I., referred to as an authority for the disposition made of the costs of the arbitration.

In re Autoheptic Steam Boiler Co., 21 Q.B.D., 182, distinguished.

J. K. Kerr, Q.C., and *Arnoldi*, for the appellants.

S. H. Blake, Q.C., and *Tilt*, Q.C., for the respondent.

Q. B. Div'l Ct.]

[Dec. 22, 1888.]

LEITCH v. GRAND TRUNK R.W. CO.

Discovery—Examination of officer of corporation—R. S. O. (1877), c. 50, s. 156—Railway conductor—Discovery before second trial from witness examined at first trial.

Held, (1) Affirming the decision of MACMAHON, J., 12 P.R., 541, that the conductor of a train of the defendant's, through whose alleged misconduct the plaintiff was injured, was an officer of the defendant's within the meaning of R. S. O. (1877) c. 50, s. 156, examinable for discovery in an action for the injuries sustained.

(2) Reversing the decision of MACMAHON, J. (FALCONBRIDGE, J., dubitante), that such conductor could be examined by the plaintiff before a second trial, notwithstanding that he had been examined as a witness at the first trial, and been cross-examined by counsel for the plaintiff, and had then offered to produce a certain book in his possession.

W. R. Meredith, Q.C., for the plaintiff.

Aylesworth, for the defendants.

Appointments to Office.

DIVISION COURT CLERKS.

Haldimand.

Thomas Bridger, of Cayuga, to be Clerk of the Second Division Court of the County of Haldimand, *vice* William Mussen, deceased.

Leeds and Grenville.

M. S. Denant, of Bastard, to be Clerk of the Sixth Division Court, *vice* W. H. Denant, resigned.

Algoma.

Robert E. Miller, of Bruce Mines, to be Clerk of the Second Division Court of the District of Algoma, *vice* Thomas Collins, resigned.

BAILIFFS.

Wellington.

William M. Franks, of Fergus, to be Bailiff of the Fourth Division Court of the County of Wellington, *vice* A. McMillan, resigned.

Brant.

Daniel Dunn, of Burford, to be Bailiff of the Fourth Division Court of the County of Brant, *vice* J. Jackson, resigned.

Stormont, Dundas and Glengarry.

Simon Warner, of Osnabruck, to be Bailiff of the Fourth and Eighth Division Courts of the united Counties of Stormont, Dundas and Glengarry, *vice* Lyman Warner, resigned.