

RECENT ENGLISH PRACTICE CASES.

jurisdiction to make a third party pay a fourth parties costs; and that it is only through judicial decisions that fourth parties are brought in at all, and there is no provision as to ordering their costs to be paid, and cited *Fowler v. Knoop* 36 L. T. N. S. 219; *Witham v. Vane*, 41 L. T. N. S. 729; *Walker v. Balfour*, 25 W. R. 511; Imp. J. A. 1873, sec. 24, subs. 3 (Ont. J. A. sec. 16, subs. 4).

Counsel for the fourth parties asked for their costs.

JAMES, L. J.—It appears to me in this case no costs ought to be given to the persons who have been brought in as third and fourth parties. There was a mere question of liability as to what was the construction of the covenant, and it appears to me that those persons who have been brought in by notice might very well have left the question to be argued by the counsel who appeared for the Duke of Cleveland, and might have given any assistance which they liked. There was no disputed question of fact to be dealt with. I think that it was wrong in point of jurisdiction, for the Judge in the Court below to order the plaintiff to pay the costs of the third and fourth parties. That part of the order will, therefore, be discharged, and there will be no order as to the costs of the third and fourth parties. The action will be dismissed, and the plaintiff must pay the costs of the defendants in the Court below and on appeal. The defendants will have their costs in the ordinary mode.

BAGGALLAY and LUSH, L. JJ., concurred.

[NOTE.—It is important to notice that under Ont. O. 12 r. 23, No. 111, the Court or Judge is empowered to give directions "as to the costs of the proceedings," where a person not a party to the action is served under the Rules of Order 12, and appears pursuant to the notice. Imp. O. 16 r. 21, is otherwise identical, but does not contain this clause as to costs, hence the decision in *Yorkshire Waggon Co. v. Newport Coal Co.*, 5 Q. B. D. 268. In the main the rules of Ont. O. 12 are identical with those of Imp. O. 16.]

SPARROW V. HILL.

Costs, taxation of.—Plaintiff succeeding upon one of several claims.—Apportionment under special order Imp. O. 6, r. 30, 32, August 12, 1875 (costs)—Ont. O. 50, r. 20, 22. (Nos. 447, 449).

February 22.—L. R., Q. B. D. 362.

In this case the plaintiff sued in respect of three heads of claim, as to two of which he failed, and as to the third recovered a small sum under the award of an arbitrator.

By the order of the Court judgment was entered for the plaintiff for the sum so found due, and the plaintiff was to recover against the defendants also "such costs as one of the Masters may find he has rightly incurred in recovering the above amount, to be taxed, and that the defendants recover against the plaintiff such costs as they have rightly incurred in defending themselves on those points on which they have succeeded, to be also taxed.

The Master, on taxation, allowed the plaintiff the general costs of the cause, disallowing only these items in his bill which applied exclusively to the parts of the claim upon which he had failed to succeed; and he allowed the defendants only certain of the costs which he had taxed off the plaintiff's bill.

The Court, however, held that the taxation must be reviewed, for the master ought to have allowed to each party the costs applicable to the portion of the claim upon which he or they respectively had succeeded, and apportioned the general costs of the cause.

It was also urged by the plaintiff's counsel that the requirements of rules 30 and 22 of Aug., 1875, (Ont. Nos. 547, 449) had not been complied with as the particular items objected to were not specifically stated in the "objections."

But the Court held that these rules apply only where particular items are objected to, not where the general principle of the taxation is challenged.

In the course of his judgment GROVE, J., said:—

"The Master has not apprehended the principle upon which the order was framed. The order evidently meant something ultra the ordinary course of taxation; it intended that each party should recover his costs so far as each item applied exclusively to matters upon which he had succeeded, and that the general costs applicable to all the matters should be appor-