

Judge was exercised under the general principle by which the question of costs and the distribution of costs is by law left to the discretion of the Court, and, therefore, that in this case there is no appeal.

MUNSTER V. RAILTON & CO.

Imp. O. 12, r. 12, O. 42, r. 8—Ont. rr. 57, 346.

Action against partners in firm name—Amendment of judgment.

[C. A., L. R. 11 Q. B. D. 435.]

The plaintiff issued a writ against the firm of R. & Co., R. only appeared to the writ, and the plaintiff delivered statement of claim against "R., sued as R. & Co." Issue having been joined, the case proceeded to trial, when a verdict for the plaintiff was taken by consent, and judgment signed against "R., sued as R. & Co." The plaintiff having subsequently discovered that C. had been a member of the firm of R. & Co., applied for an order to amend the judgment by making it in accordance with the writ, a judgment against the firm of R. & Co.

Held, that the amendment ought not to be allowed, for the plaintiff, although he acted in ignorance of the facts, must be taken to have elected to sue R. alone, and was concluded by the form of the proceedings subsequent to the appearance.

Judgment of the Queen's Bench Division (L. R. 10 Q. B. D. 475) reversed.

Per BOWEN, L. J.—The plaintiff's proper course would have been to apply to set aside all proceedings subsequent to the action, when he departed from the ordinary mode of prosecuting an action against a firm; but he has not asked for this, and instead of it he asks that the judgment may be amended without amending the pleadings. I think that we should be defeating the substantial forms of justice if we were to accede to this application.

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

COURT OF APPEAL.

[Oct. 27.]

RE DONOVAN—WILSON V. BEATTY, AND
HALDEN V. BEATTY.

Solicitor and client—Administrator ad litem—Order to refund costs.

The order of Proudfoot J. (29 Gr. 280) reversed on appeal [Spragge, C. J. O., dissenting,] the court being of opinion that the taxations of the bills of costs referred to in the petitions, and all the other proceedings in reference thereto, having been taken in the absence of the solicitor, he could not be bound thereby, and the order under which the money had been directed to be repaid by Donovan was set aside with costs.

The appellant (Donovan) in person.

MacLennan, Q. C., Moss, Q. C., O'Donohue, Q. C., and Morphy for the respondents.

Foy, for the plaintiff Wilson, in the Court below.

[Oct. 27]

RE WEST SIMCOE ELECTION.

Corrupt practices—Acts of agents.

One H., a tavern-keeper within the electoral division had been appointed a delegate to the convention at which he attended, and at which the respondent P. had been nominated as a candidate for the constituency, when P. addressed the convention, calling upon his supporters to use their best exertions in securing his return.

On election day H., whose house was distant about a mile from a polling booth, was proved to have kept his bar open during the hours of polling, and treated a voter, whom he called into the tavern on passing :

Held, [BURTON, J. A., dissenting] that this was such a corrupt practice of an agent as voided the election.

Bethune, Q.C., S. H. Blake, Q.C., Lount, Q.C. and Johnson for the appellant.

McCarthy, Q. C., for the respondent (the petitioner.)