

Practice.

MEREDITH, J.]

[Dec. 6, 1894.

CROOKS v. TOWNSHIP OF ELLICE.

HILES v. TOWNSHIP OF ELLICE.

Costs—Taxation—Drainage actions—Appeal—Reference to drainage referee—Costs awarded on appeal.

Where actions begun in the High Court were referred at the trial to the drainage referee, and upon appeal from his report an order was made by an appellate court for taxation and payment of costs of the actions ;

Held, that they were not costs coming within the provisions of s. 24, s.s. (4), of the Drainage Trials Act, 1891, but were to be taxed in the usual way in which costs of actions are taxed, and subject to the same right of appeal.

W. M. Douglas and J. P. Mabee for the plaintiffs.

J. M. Clark and J. H. Moss for the defendants.

(See *Fewster v. Township of Raleigh*, ante p. 287.)

WINCHESTER, M.C.]

[June 3.

BERTRAND v. PROULX.

Pleading—Striking out counterclaim—Rule 374—Terms.

The plaintiff, a dealer in hay, purchased a quantity of hay from the defendant. A cheque was given by the plaintiff to procure delivery of part of the hay. The cheque being dishonoured, the defendant instituted proceedings against the plaintiff for obtaining goods under false pretences, and at the hearing the plaintiff was discharged. This action was then brought for malicious prosecution, and the defendant counterclaimed for slander, alleging that the plaintiff had published that he, the defendant, had altered a draft given in payment for part of the hay, drawn in his favour by the plaintiff on a Montreal firm, from \$100 to 160.

The plaintiff moved to strike out the counterclaim under Rule 374, citing *McLean v. Hamilton Street Railway*, 11 P.R. 193; *Central Bank v. Osborne*, 12 P.R. 160; *O'Dell v. Bennett*, 13 P.R. 10; *Lee v. Collyer*, W.N. 1876, p. 8; *Nicholson v. Jackson*, W.N. 1876, p. 38; *Naylor v. Farrar*, W.N. 1878, p. 187.

Held, (1) that the counterclaim must be struck out without prejudice to the defendant's right to bring a separate action for the claim set up in the counterclaim.

(2) That in the event of a new action being brought for the claim set up in the counterclaim no judgment be entered in this action without leave of the court or judge.

(3) That the costs of the counterclaim and of this application be disposed of by the judge at the trial of such new action, and in case such action be not brought, or not brought to trial, such costs to be to the plaintiff in any event of the cause.

Defries (Robinson, O'Brien & Gibson) for the plaintiff.

W. E. Middleton for the defendant.