

the close of the evidence in the case for both sides, raise the point that he claimed a lien on certain merchandise in stock, which was sold by the plaintiff, the proceeds of which ought to have been, but were not, applied in reduction of the debt.

*Held*, that where a point is one of fact, or of mixed law and fact, it cannot be raised in the Court of Appeal for the first time unless the Court is satisfied that by no possibility could evidence have been given which would affect the decision upon it; but where the point is wholly one of law, such for instance, as the construction of a statute, it may be raised for the first time in appeal subject to such terms, if any, as the Court may see fit to impose.

Decision of Irving, J., affirmed.

*Hamilton*, K.C., for plaintiff. *C. B. MacNeill*, K.C., for defendant Stone.

---

[Hunter, C.J.] *CIZOWSKI v. WEST KOOTNAY.* [April 23.]

*Practice—Workmen's Compensation Rules, 1901—Object of Rule 34—Security for costs.*

On an application by respondents in proceedings under Workmen's Compensation Act, 1902, for security for costs of such proceedings, it appeared that a request for arbitration, with particulars annexed, had been filed with the District Registrar of the Supreme Court at Nelson, on behalf of the father and mother of the deceased workman. Both parents resided in Austria, out of the jurisdiction.

*Held*, that the object of Rule 34 is to make the proceedings subject to the same rules as an action in this regard.

*W. S. Deacon*, for respondents. *S. S. Taylor*, K.C., for applicants.

---

Full Court.] [April 26.]

*YOULDALL v. TORONTO AND BRITISH COLUMBIA LUMBER CO.*

*Practice—Writ against extra-provincial, unlicensed company—Time for entering appearance—Application for leave to serve ex juris—Rules of Court, application of to proceedings under Part VII.*

Section 146 of the Companies Act, R.S.B.C. 1897, c. 44, defines an unlicensed and unregistered extra-provincial company.