at a moderate rate of speed, and he should not be in a worse position by not looking than he would have been otherwise.

Appeal dismissed with costs.

Osler, Q.C., and *Laidlaw*, Q.C., for the appellant.

Fullerton, Q.C., for the respondent.

Practice.

Court of Appeal.] [Oct. 29.

BOULTBEE *v.* COCHRAN.

Parties—Third party procedure—Relief over—Amendment—Time—Rules 328-332—Order—Discretion—Appeal.

An action was brought against two defendants for a money demand. One defendant suffered judgment by default. The plaintiff proceeded against the second defendant, claiming by virtue of an assignment from the first of his claim or action against the second, and at the trial the action was dismissed against the second on the ground that the assignment was inoperative. Upon an appeal by the plaintiff to a Divisional Court, an order was made directing that, notwithstanding the assignment, the first defendant should be allowed to amend the pleadings by claiming over against the second defendant, who was to be allowed also to amend, and further evidence was to be taken, if necessary.

Held, (1) not a mere discretionary order, but one from which an appeal lay.

Hately v. *Merchants' Despatch Transportation Co.*, 12 A.R. 640, followed.

(2) That the order could not be sustained under Rules 328-332 (1313) or otherwise, as it was made at too late a stage, and upon the application of the plaintiff only.

Moss, Q.C., for the appellant.

H. J. Scott, Q.C., for the respondent.

MANITOBA.

COURT OF QUEEN'S BENCH.

BAIN, J.] [Oct. 17.

LINES *v.* WINNIPEG ELECTRIC STREET RAILWAY COMPANY.

Negligence—Street railway company—Liability for accident.

This was an action in the County Court of Winnipeg, in which the plaintiff sought to recover damages for an injury to herself arising from alleged negligence of the defendants. The plaintiff was sitting in a sleigh, which was standing at the side of the road, a team of horses being attached to the sleigh when another team of horses was coming off a bridge near by just as a car of the defendants was approaching in an opposite direction, and at a high rate of speed, as was alleged. This latter team showed signs of terror, but the motor-