

Com. Pleas.]

NOTES OF CANADIAN CASES.

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brought before another magistrate thereon, convicted and fined. Subsequently the magistrate who had issued the warrant, caused the defendant to be summoned before him for the same offence, and again convicted and fined him, after refusing to receive evidence of the prior conviction.

The Court quashed the second conviction with costs.

Held, that, even assuming that the first conviction was void by reason of the defendant having been brought before a magistrate other than the one who issued the warrant, his appearance and pleading thereto amounted to a waiver, and, at any rate, the magistrate who convicted the second time could not take advantage thereof.

Watson, for motion.

Alan Cassels, *contra*.

Cameron, J.]

RE DOVER AND CHATHAM.

Drainage—Award—Surveyors' Report.

Under the Municipal Act the surveyor's report and plans with a view to drainage, in which a couple of townships are interested, should shew the work towards which the servient one is to contribute; and a report which does not comply with secs. 529 *et seq.* of that Act renders void the award confirming the surveyor's assessment.

COMMON PLEAS DIVISION.

HARRISON V. LEACH.

Local Judge of High Court—Order for speedy judgment—Varying same.

On 19th January, plaintiff obtained an order for speedy judgment from one of the county judges, Middlesex, as local Judge of the High Court, under which judgment was signed and execution placed in the sheriff's hands. It was the practice of both the local courts judges in the county to insert a provision that all creditors whose writs of summons had issued prior to that of the creditor applying for the order should be allowed to come in and share rateably with such creditor, provided they obtained judgment within a limited time. The plaintiff's solicitors were not aware

of such practice, and in good faith obtained the order without such provision; nor did the learned judge suggest its insertion. Another creditor, whose writ was issued prior to plaintiff's, applied to the local judge, who granted a summons bringing plaintiff before him, and on the return thereof, on 24th January, under an order amending the order previously made by him, by requiring the provision as to rateable distribution to be inserted therein, and directing the sheriff to be governed thereby. The plaintiff thereupon appealed to CAMERON, J., who held that the learned judge had no power to make the order of 24th January, which was thereupon set aside on appeal to the Divisional Court.

Held, that the appeal must be dismissed; that the local judge has no power to vary the order granted by him without concealment or fraud, and after it had been acted upon.

G. M. Rae, for the plaintiff.

R. M. Meredith, for the applicant.

MURPHY V. DALTON.

Clearing land—Setting out fire—Sudden rising of wind—Negligence—Watching fire.

The defendant, for the purpose of clearing his land, set out fire on same. There was a thin, bare lot taken out of the south-east corner of the defendant's lot, on which there was a mill, and near the mill a quantity of lumber belonging to the plaintiff. The defendant set out the fire on Monday, but before doing so consulted with the plaintiff, who agreed that the weather was favourable for the purpose, the wind blowing in the direction away from the plaintiff's property. In setting out the fire he burnt up around the plaintiff's property so as to prevent the fire from spreading to it in case of change of wind. The wind continued in the same direction on Tuesday and Wednesday, and in the interval there were falls of rain, in consequence of which the defendant did not keep a watch over the fire. On Thursday morning there were indications of a change of wind and the defendant sent his son to go and watch the fire, but when he arrived the wind was blowing at the rate of from thirty-five to forty miles an hour, and by reason of this sudden rising of the wind the fire was communicated to the plaintiff's lumber, which was destroyed. The evidence