

Q.B.]

NOTES OF CASES.

[C. P.]

the number of articles he wished to purchase, and naming the prices he would pay for some of them. The plaintiff, having obtained the defendant's consent to fill this order, shipped P. a larger quantity of goods than was specified in the order. He also invoiced those as to which prices were specified at a higher price than that mentioned in the order, and thereafter without disclosing to defendant these facts, presented to him for signature a bill of exchange for the price of the goods shipped, representing to him that it was for the price of the goods ordered.

*Held*, that the defendant, being a surety, was entitled to be informed of the plaintiff's action in the premises, and that having been deceived by the plaintiff, he was discharged from liability.

HAGARTY, C. J. dissented.

*Falconbridge* for plaintiff.

*E. D. Armour*, for defendant.

#### HARPER V. DAVIES.

*Wrongful dismissal—Contract for yearly hiring—Nonsuit—New trial.*

*Held*, that an action for wrongful dismissal cannot be maintained on a verbal agreement for a hiring by the year, it being "an agreement not to be performed within the space of one year from the making thereof."

Where the plaintiff, in addition, claimed under the common counts a balance due partly for wages and partly on an account, and the jury gave the plaintiff a "lump sum" which would include some damages upon the count for wrongful dismissal, a new trial was directed.

*J. Macgregor*, for plaintiff.

*Allan Cassels*, for defendant.

#### REGINA V. WHELAN.

*Certiorari—Effect of—Right to proceed for objects other than that for which certiorari was obtained.*

*Held*, that a conviction once regularly brought into, and put upon the files of the court is there for all purposes; and that a defendant may move to quash it in whosoever interest it may have been brought there.

*Regina v. Leveque*, 30 U. C. R. 509, distinguished.

*Cattanach*, for the Attorney-General.

*Meek*, for defendant.

IN RE BLAND V. ANDREWS; HOWARD, GARNISHEE.

*Prohibition—Division Court Clerk—Garnishing money in hands of.*

*Semle*, that money upon being paid to a Division Court clerk on the final disposition of a case, is paid in to the use of a suitor and is garnishable.

*Per* CAMERON, J. It does not become a debt from the Division Court clerk to the suitor till demand made.

Where the garnishee, who was clerk of the 1st Division Court of the county of York, had submitted himself to the jurisdiction and had paid the money in his hands into the 10th Division Court of the county, from which latter Court the summons issued, and since the judge of the Division Court had acted within his jurisdiction in determining whether the garnishee was indebted to the primary creditor and whether the debt was attachable.

*Held*, that the order of GALT, J. discharging a summons for a prohibition was right; and a rule *nisi* to rescind the same and for a writ of prohibition was discharged. *Dolphin v. Layton*, L. R., 4 C. P. D. 130 remarked upon.

*Murdoch*, for the Rule.

*Williamson and Patterson* contra.

#### COMMON PLEAS.

IN BANCO.—MICH. TERM, 1880.

CULVERWELL V. CAMPTON.

*Principal and agent—Right to double commission.*

An agent, employed by his principal to effect an exchange of property with another, cannot retain for his own benefit a commission received from that other in the transaction. But where the principal is aware that the agent has received such commission, and makes no objections to his retaining it, but with full knowledge of the fact negotiates with him for a settlement of the amount of his remuneration, he cannot, in an action for remuneration, set off the amount received by the agent from the other party.

*J. E. Rose*, for the plaintiff.

*Beaty, Q. C.*, and *A. Cassels* for the defendant.