

NOTES OF CANADIAN CASES.

[Sup. Ct.]

no part of the High Court has power to issue such an injunction now ; but it is not necessary to decide that.

Aslatt v. Corporation of Southampton, L. R. 16, Ch. D. 143, doubted.

Per COTTON, L. J.—In my opinion the sole intention of the section is this : that where there is a legal right which was, independently of the Act, capable of being enforced either at law or in equity then, whatever may have been the previous practice, the High Court may interfere by injunction in protection of that right.

THE CAMPAGNIE FINANCIERE V. THE PERUVIAN GUANO CO.

Imp. O. 31, r. 12.—Ont. Rule 222.

Production—Relating to matters in question in the action.

[L. R. 11 Q. B. D. 55.]

A document which it is not unreasonable to suppose, may tend either to advance the case of the party seeking discovery, or to damage the case of his adversary, should be regarded as a document relating to a matter in question in the action.

Per BRETT, L. J.—I do not think that the Court is bound any more on the second summons than on the first to accept absolutely everything which the party swearing the affidavit says about the documents, but the Court is bound to take his description of their nature. The question must be, whether from the description either in the first affidavit itself, or in the list of documents referred to in the first affidavit, or in the pleadings of the action, these are still documents in the possession of the party making the first affidavit which it is not unreasonable to suppose do contain information which may, either directly or indirectly, enable the party requiring the further affidavit either to advance his own case, or to damage the case of his adversary.

Jones v. Monte Video Gas Co. L. R. 5 Q. B. D. 556, applied and discussed.

BRITAIN V. ROSSITER.

Imp. J. A. sec. 24 subs. 4, 6.—Ont. J. A. sec. 16, subs. 5, 8.

[L. R. 11 Q. B. D. 123.]

The doctrine as to part performance, whereby a contract not enforceable by an action at law

owing to the provisions of the Statute of Frauds, s. 4, was rendered enforceable in equity, was confined to suits as to the sale of interests in land, and its operation has not been extended by the provisions of the Judicature Act.

Per BRETT, L. J.—I think that the true construction of the Judicature Acts is that they confer no new rights ; they only confirm the rights which previously were to be found existing in Courts either of Law or of Equity ; if they did more, they would alter the rights of parties, whereas in truth they only change the procedure.

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

SUPREME COURT OF CANADA.

SMITH V. GOLDIE.

Patent — Combination — Novelty — Inventor — Prior Patent to person not inventor — Pleading and practice — Section 6 Patent Act — Use by others in Canada — Use by patentee in foreign countries — Section 22 Patent Act — Final decision — Judgment in rem — Section 7 Patent Act, 1872 — Commencement to manufacture before application in Canada — Section 48 — Use by defendant before patent — Non-suit in Chancery — Practice.

An invention consisted of the combination in a machine of three parts, or elements, A, B and C, each of which was old, and of which A had been previously combined with B in one machine and B with C in another machine, but the united action of which in the patented machine produced new and useful results.

Held, [STRONG, J., dissenting.] to be a patentable invention. To be entitled to a patent in Canada, the patentee must be the first inventor in Canada or elsewhere. A prior patent to a person who is not the true inventor is no defence against an action by the true inventor under a patent issued to him subsequently, and does not require to be cancelled or repealed by *scire facias*, whether it is vested in the defendant or in a person not a party to the suit.

The words in the 6th section of the Patent Act, 1872, "not being in public use or on sale for more than one year previous to his applica-