

HIGH COURT OF JUSTICE.

Britton, J.]

POPE v. PEATE.

[Feb. 18.]

Injunction—Teaching music—Noise—Nuisance.

Defendant hired rooms in a business part of a city for the purpose of giving music lessons, put up his sign and gave lessons on the mandolin to over 200 pupils between the hours of 9 a.m. and 10 p.m. On a motion for an injunction by an occupier of rooms on the opposite side of the hall in the same building, who had taken his rooms subsequently, to restrain the defendant from giving lessons on the ground that the noise was a nuisance. It was

Held, on the evidence that the noise to which objection was taken was reasonably connected with and incidental to the teaching, that the defendant's use of the premises was not an unreasonable use; and that to offend against the law the teaching of music lessons in such premises must be done in a manner which beyond fair controversy ought to be regarded as unreasonable; that an injunction would break up his business and it would be better that the plaintiff should be compensated in damages if he was entitled to recover and the injunction was refused.

N. G. Guthrie, for plaintiff. *A. E. Fripp*, for defendant.

Cartwright—Master.]

AMERICAN ARISTOTYPE CO. v. EAKINS.

[Feb. 24.]

Security for costs—Money paid into court for—Tender by defendant before action and money paid into court in satisfaction of plaintiff's claim—Application for payment out in the alternative.

The plaintiffs, resident in the States, in compliance with an order for security for costs paid \$200 into court. The defendants in their defence set up tender, before action and paid into court \$189.52 in full of plaintiffs' claim of \$353.89 and costs. On an application by the plaintiffs for an order either for payment out of the money paid in by the defendants or for an order rescinding the order for security for costs and repayment of the \$200 paid in by the plaintiffs. It was

Held, following *Griffiths v. School Board of Ystradyfodwg* (1890) 24 Q.B.D. 307, that if the plaintiffs elect to take out the money paid in with the plea of tender, they must take it out in full of their claim and the defendants would be entitled to their costs.

Held, also, that the order for security for costs having been regularly issued and acted on, it was too late to set it aside and the motion was dismissed.

W. R. Smyth, for the motion. *W. J. O'Neil*, contra.