COUNTY COURT.—COUNTY OF ONTARIO.

(Reported for the LAW JOURNAL.)

OSHAWA CABINET CO. v. NOTE.

Practice—Devolution of cause of action—Continuance of suit.—Rules 164 & 385, O. J. A.

Where a cause of action has devolved upon a third party, the proper course is to take out an order upon *præcipe* to continue the action, under Rule 385, and not to proceed as directed in Rule 164.

[November 12, 1881.—Dartnell, J.J.

Action on a promissory note, to which the defendant appeared and filed pleas, which were afterwards struck out. The defendant asked leave to plead, that the note in question had been transferred to the plaintiffs to secure a debt of the payee, one T. N., to them, which note, since the commencement of the action, had been satisfied by T. N., and, that he thereupon became the beneficial plaintiff. The plaintiff admitted these as facts, and the defendant swore he had a good defence upon the merits, as against T. N. The question then arose as to the proper practice to pursue.

DARTNELL, J. J.—I think there has been such a devolution of the cause of action as to entitle T. N. to an order to continue the action in his own name, under Rule 385. Under the old practice the plaintiff could admit the truth of a plea, *puis darrein continuance*, and discontinue his action. He would be entitled to his costs up to that time. This in effect continues to be the practice under Rule 157.

It is contended that Rule 164 applies to this case. I do not think it does. I think the new plaintiff should take out an order, under Rule 385, and that the former plaintiffs should have their costs. Judgment having been entered, this will be set aside upon payment of these costs; T. N., the new plaintiff to file a new statement of claim, to which the defendant may plead as he may be advised.

DIGEST OF RECENT DECISIONS IN UNITED STATES COURTS.

DURESS.

A threat of suicide by the husband to induce his wife to sign a note will not amount to duress. *Remington* v. *Wright.*—Central L. J., Jan. 13.

MECHANICS' LIEN.

A foreman engaged in directing the work in a mine performs "work and labour" in the mine within the meaning of the Mechanics' Lien Law, and is entitled under it to a lien upon the mine for services. *Flagstaff & Co.* v. *Cullins.*—Ib.

NEGLIGENCE—MASTER AND SERVANT.

The introduction by the employer of new and unusual appliances involving unanticipated danger to the employee, without giving notice to such employee of the character of the new appliances, is negligence. *O'Neil* v. *St. Louis, etc., R. Co.*—Ib.

NEGLIGENCE—RAILWAY FIRES.

In an action for damages for injuries to property by fires caused by sparks from the defendant's locomotive engine, evidence having been admitted on behalf of the defendant, that the spark arrester was examined at the end of the return trip and was found to be in good condition. It was *held*, that evidence that property had been set on fire in the same neighbourhood upon this return trip was admissable. *Loring* v. *Worster, etc., R. Co.*—Ib.

BILLS AND NOTES—ALTERATION.

When one of the signers of a promissory note adds to his signature the word "surety" and the others do not, the presumption is that the note was given for value by the other makers, and that they are the principal debtors, and the erasure of the word "surety" was a material alteration of the instrument and avoided the note. *Rogers* v. *Tapp.*—Ib.

BILLS AND NOTES—ENDORSEMENT IN BLANK.

1. An indorsement in blank of a negotiable promissory note is a complete commercial contract, and not in any sense an unpaid contract. Consequently evidence of a prior agreement between the parties at the time, that it should merely have the effect of an indorsement "without recourse," is admissible.

2. When the maker of a note is insolvent, a failure on the part of an indorsee to prosecute it to judgment against him will not prejudice his claim against the indorser. *Martin* v. *Call.*—Ib. Jan. 20.

MASTER AND SERVANT.

The relation of master and servant is such that the servant will be restrained by injunction from making use of the knowledge and information of his master's affairs acquired in his service, to engage in a business enterprise (during the continuance of the contract of service) which will have a tendency to place him in a position of antagonism to the interests of his employer. *Gower* v. *Andrew.*—Ib.

AGENT—ACTING FOR BOTH PARTIES.

The double agency of a real estate broker, who assumes to act for both parties to an exchange of lands, involves, *prima facie*, inconsistent duties, and he cannot recover compensation from either party, even upon an express promise, until it is clearly shown that each principal had full knowledge of all the circumstances connected with his employment by the other, which