

PRACTICE CASES.

Proudfoot, J.]

[Nov. 28.]

WEBSTER V. LEYS.

Married women—Next friend—Rules 97 and 494, O. J. A.

Where a decree was made in June, 1881, two months before the O. J. A. came into force, and an order was made on the 29th October, 1883, staying proceedings until a new next friend was appointed to the married women plaintiffs, who sue in respect of their separate estate. *Held*, that the order was right, for although Rule 97, O. J. A. says that married women may sue without a next friend in regard to their separate estate, yet R. 494, O. J. A., in effect says they shall not do so where a decree has been obtained before the O. J. A. came into force.

Black for the plaintiffs.

Kingsford for the defendant Leys.

Divl. Ct. Chy. Div.]

[Dec. 13]

WILLS V. CARRALL.

Jurisdiction of Master in Chambers—Judgment—Absconding Debtors' Act.

The MASTER IN CHAMBERS made an order under R. S. O. c. 68, sec. 9, referring it to the County Court Judge to ascertain the amount due by an absconding debtor and judgment was entered pursuant thereto; another creditor then obtained an order from the master setting aside the judgment and allowing him in to defend.

Held, on appeal, that the MASTER IN CHAMBERS has no jurisdiction to set aside such a judgment.

On appeal the Divisional Court upheld the order of PROUDFOOT, J., but the relief sought for was granted on terms.

W. Cassels, Q.C., and *Holman* for the appeal.
Aylesworth, contra.

The Master in Chambers.]

[Nov. 30.]

KELEBER V. MCGIBBON.

Entry of Judgment—interest—Rules 326 & 351 O. J. A.

In endorsing a writ of execution to levy interest upon the amount of the judgment, the interest is to be computed from the day of pro-

nouncing the judgment, not from the day of the formal entry thereof.

Rules 326 & 351 O. J. A. are inconsistent. The "day in which judgment is pronounced" referred to in Rule 326, is "the time when judgment was entered up," referred to in Rule 351.

Ogden, for the plaintiff.

Clement, for the defendant.

Wilson, C. J.]

[Sept. 20.]

GRANT V. GRANT.

Sheriff's charges on execution—Rent—Possession—Money.

An application by the plaintiffs for the revision of a taxation by a local master. Writs of execution were placed in the sheriff's hands; and he levied on the 12th of February, 1883; the goods, with the assent of the debtor, were retained in Belleville, and in Madoc, on the premises in question, but the keys of both premises were handed to and retained by the sheriff who sold the goods on the 9th of March, 1883.

The following charges were taxed to the sheriff by the local master at Belleville:

1. Rent paid landlord of the execution debtor for premises in Belleville, due 1st March, 1883, \$250; removal of goods \$10 \$260 00
2. Taking stock at Belleville two persons at \$4 each per day for ten days, \$80, and \$20 allowed at 60 00
3. Possession money at Belleville, 26 days at \$2 per day 32 00
4. Taking stock at Madoc allowed at 8 00
4. Possession money at Madoc, 29 days \$58 and \$6 64 00

On appeal, WILSON, C. J., disposed of the items as follows:

No. 1 disallowed as well because the goods could have been removed before the rent became due, as because when seized they were held under the execution and in the custody of the law, and there was nothing in the lease which entitled the landlord to precipitate the payment of the rent by reason of the delivery of the execution to the sheriff.

Nos. 2 and 4 disallowed.

These items are not allowable by the tariff and by R. S. O., c. 66, sec. 51, the taxing officers can allow only such items as are correct and legal.