

[Prac.]

NOTES OF CANADIAN CASES.

[Prac.]

Held, that the Chancery practice must be followed, and that by it the local judge had jurisdiction to make the order *ex parte*.

Semble, that an affidavit of the solicitor of his information and belief that the witness was dangerously ill was sufficient.

The affidavit and the circumstance that the order was not acted upon for thirteen days after it was issued were regarded as unsatisfactory, and limitations were imposed upon the use at the trial of the evidence taken under the order.

H. J. Scott, Q.C., for the appeal.

Holman, contra.

Rose, J.]

[April 7.]

BULL V. NORTH BRITISH CANADIAN
INVESTMENT COMPANY ET AL.

Amending statement of claim—Changing place of trial—Rule 179 O. J. A.

The plaintiff, having in his statement of claim named Toronto as the place of trial, afterwards amended it on *præcipe* under rule 179 O. J. A., naming in the amendment Belleville as the place of trial.

Held, on appeal, affirming the decision of the Master in Chambers, and following *Freitsh v. Winkler*, 3 Chy. Cham. Rep. 109, decided under Chy. G. O. 81, which is substantially the same as rule 179, that no change of the place of trial could be made by amendment of the statement of claim.

Millar, for the plaintiff.

Credman and Urquhart, for the defendants.

Mr. Dalton, Q.C.]

[April 5.]

Rose, J.]

[April 10.]

THE DAVIES B. & M. CO. V. SMITH.

Executions—Money paid to sheriff—Creditors' Relief Act, 1880.

The plaintiffs placed a writ of execution against the defendant in the hands of the sheriff of Ontario on the 6th December, 1884.

The sheriff seized the defendant's goods on the 8th December.

The defendant made a mortgage of his goods to D. on the 9th December.

B. placed a second execution against the defendant in the hands of the sheriff on the 22nd December.

On the 31st December the mortgagee, D., paid to the sheriff the whole amount of the first execution, \$115, specially appropriating the payment to that execution, and the sheriff in like manner received the money on that execution.

Held, that the money paid to the sheriff was not "levied" by him within the meaning of the Creditors' Relief Act, 43 Vict. (O.) c. 10, and that the first execution creditor was entitled to the whole of it.

Holman, for the sheriff.

Watson, for the first execution creditors.

H. D. Sinclair, for the second execution creditor.

J. R. Roaf, for the claimant.

Ferguson, J.]

[March 16.]

PETRIE V. GUELPH LUMBER CO. ET AL.

STEWART V. GUELPH LUMBER CO. ET AL.

INGLIS V. GUELPH LUMBER CO. ET AL.

Costs—Taxation—Appeal—Cases printed and argued together—Defendants severing.

Appeal from the certificate of one of the taxing officers on the taxation of the costs of these actions in the Court of Appeal.

Quære, whether the appeal should not have been to a judge of the Court of Appeal.

The defendants were the same in all three actions. The actions were brought against the defendants other than the company as wrongdoers. They were sued for an alleged conspiracy to defraud, which, it was alleged, they carried into effect by defrauding the plaintiffs respectively. The defendant, McLean, defended meeting the charge directly. The other defendants did the same, but they further said that they obtained their information from McLean, and that they believed it to be true, and believed that the statement made by them and McLean, which is the foundation of the actions, was true.

Held, that the taxing officer was right in allowing two bills of costs, one to the defendant, McLean, and one to the other defendants.