

Chan. Ch.]

NOTES OF CASES.

[Div. Cts.]

executed in New York, a suit in respect thereof may be instituted in this Province.

In a suit in this Court to set aside the nomination by the defendants of an arbitrator on behalf of the plaintiffs, for irregularity in such nomination—

Held, that the arbitrators being necessary parties, and the defendants resident in this country, the arbitrators though resident out of the jurisdiction, were properly made defendants to the bill.

Blake, V. C.]

[April 11.]

RE LAYCOCK.

MCGILLIVRAY V. JOHNSON.

Administration Suit.

After an abortive sale by auction, and an abortive sale by tender, the plaintiff who had the conduct of the third sale obtained leave from the Master to bid, and at the solicitation of all parties interested purchased the property at what was shown to be a good price. The guardian of the infants was not aware that the Master had given the plaintiff leave to bid, but did not oppose the motion on a motion to confirm the Master's report.

BLAKE, V. C.:—"One of the most stringent and jealously guarded rules of the court is that a party's *prima facie* interest will not be permitted to conflict with his duty. The vendor's duty is to get as high a price as possible—his interest, if he be allowed to bid, to pay a low one. The jurisdiction in such cases rests exclusively with the court, and the local Masters cannot invade the court's prerogative and expect to have that invasion confirmed by *nunc pro tunc* orders. The plaintiff's solicitor presumably knew the well-established practice of the court, the growth of many years, the subject of many reports, and should have asked the leave of the court before the rule. To encourage this practice would be to establish a most dangerous precedent. I refuse the application."

CHANCERY CHAMBERS.

Blake, V. C.]

[Feb. 28.]

GODERICH V. BRODIE.

Service of bill of complaint—Assignee in insolvency—Absconding defendant.

Where the defendant in a suit had abscond-

ed to the United States before the filing of the bill, and two months after the filing of the bill an assignee in insolvency was appointed by the creditors of the defendant, and the assignee was served with the bill, but not within the time limited by the general orders, the Referee in Chambers made an order allowing the service as good, though made 14 months after the bill was filed.

Held, on appeal, affirming decision of the Referee that the defendant having absconded was a sufficient reason for not proceeding with greater diligence.

DIVISION COURTS.

1st. D. C., Middlesex.]

[Feb. 12.]

ENGLISH LOAN COMPANY V. HARRIS.

Division Court Act of 1880—Jurisdiction.

The defendant applied by written application for a loan from the plaintiffs. The application was signed at the village of Wiarton, within the limits of 8th Division Court, County of Bruce, where defendant resided. The loan was not effected. The plaintiff brought action in the 1st Division Court of Middlesex to recover costs paid to solicitor for drawing mortgage, investigating title, &c. The head office of the plaintiffs was in the city of London, within the limits of the 1st Division Court of Middlesex. The defendant obtained a summons under sec. 11 of the Division Court Act of 1880, calling on plaintiffs to shew cause why all papers and proceedings should not be transferred to the 8th Division Court of the County of Bruce, and become proceedings thereof as though this cause were at first properly entered therein, on the ground that this Court had no jurisdiction.

ELLIOT Co. J. In this case the writer's application emanated from the defendant at Wiarton. Upon this application the proceedings were taken. It is, therefore, a portion of the contract and the case seems undistinguishable from *Hagle v. Dalrymple*, 8 Pr. R. 183, and so long as that case, also *King v. Farrell* 8 Pr. R. 119, and *Noxon v. Holmes*, 24 C. P. 541, remain as authorities in our Courts upon the questions involved in this matter, I must adhere to them. The summons must be made absolute.

Summons absolute.