

Sup. Ct.]

NOTES OF CASES.

[Exch. Ct.]

which have been incurred by reason of that allegation. I am therefore of opinion, without going into the question whether or not a proper discretion has been exercised, that the court has power to deal with the costs of these proceedings as well between the original parties, as between them and the third party. There may be cases in which the discretion might be exercised so as to cause hardship, but we must not, for that reason, cut down the general effect of the power."

NOTE.—*Imp. Jud. Act, 173, s. 24, sub. s. 3. and s. 49 are identical with Ont. Jud. Act s. 16. sub-s. 4. and s. 32 respectively. Imp. O. 16. r. 18 and Ont. r. 108 are virtually identical, except that the former says the notice shall be "stamped with the seal with which writs of summons are stamped." Imp. O. 55, r. 1. and Ont. r. 428 are identical.*

NOTES OF CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

SUPREME COURT.

P. E. I.]

REID ET AL. v. RAMSAY.

Appeal—Judgment on demurrer not a final judgment—Motion to quash—42 Vict., cap. 39, sec. 3.

In an action for false imprisonment, the defendants (appellants) justified the imprisonment under a judgment entered up in the Supreme Court, and an execution issued thereon. The plaintiff replied that the execution was issued in blank, and that the execution issued without a præcipe therefor ever having been filed.

To both of these replications the defendants below demurred, and rejoined in addition to the fourth replication that forthwith upon the issuing of the writ, a præcipe therefor had been filed; to which rejoinder the plaintiff below demurred.

Judgment was subsequently rendered for the plaintiff on all the demurrers. The defendants appealed to the Supreme Court, and the printed case contained the reasons for judgment, and the following extract from the minutes of the prothonotary of the entry of the judgment delivered by the court:—

"Demurrer argued, 30th October last, when the court took time to consider. The Chief Justice now gives judgment for the plaintiff on all the demurrers."

Held, that the case did not show that a judgment had been entered up on the demurrer, and even if entered up, that the action having been instituted in a superior court of common law, such judgment would not have been a final judgment, from which an appeal would lie within the meaning of the Supreme and Exchequer Court Act, or of the Supreme Court Amendment Act of 1879.

Appeal quashed.

Peters, for respondent.

Thompson, Q. C., for appellants.

EXCHEQUER COURT.

Taschereau, J.]

[March

RE PETITION OF RIGHT.

Petition of right—Breach of notarial contract—Representations.

On the 14th of July, 1875, the government of Canada, through one Louis Morin, advertised for tenders for the removal of steel rails from the harbour of Montreal to the Rock Cut at Lachine.

The suppliant tendered for the contract according to the advertisement, and suppliant's tender being accepted, a notarial deed of contract was entered into and executed. The contract provided *inter alia* that "the said party of the second part, hereby undertakes to remove and carry for the Government of the Dominion of Canada, all the steel rails that are actually, or that will be landed from sea-going vessels on the wharves of the harbour of Montreal, during this season of navigation, and deliver and lay on the ground the said steel rails, at the place commonly called Rock Cut, on the Lachine Canal, subject to the terms and conditions hereinafter mentioned.

By his petition of right, the suppliant alleged a breach of the contract by the Crown, and Morin that, acting for the Crown, represented to the suppliant, that some 30,000 tons of rails would have to be removed, and that under such representations the suppliant entered into the contract.

The amount claimed was \$10,000.