

RECENT ENGLISH PRACTICE CASES—NOTES OF CANADIAN CASES.

REPORTS.

RECENT ENGLISH PRACTICE CASES.

ARMOUR V. WALKER.

Imp. O. 37, r. 5 (1883)—Ont. r. 285.

Commission to examine witnesses abroad—Witnesses not named in order.

[C.A.—L.R. 25 Ch. D. 673.]

Application on behalf of the plaintiffs to examine in New York on commission one or more of themselves, and the manager of their firm, and certain American lawyers as to the American law of limited partnership, and generally witnesses whose evidence was material for the trial of the action. CHITTY, J., made the order appointing examiners in New York to take the evidence of witnesses residing at New York, and elsewhere in the United States, and particularly of the plaintiffs and of their manager, and of two American lawyers therein named.

Held, now, by the Court of Appeal, the order was in substance right, but should be qualified by directing that the commission was to be executed in New York, and that if the plaintiffs wished to examine any persons other than those named in the order, they must give ten days' notice of their names and addresses to the opposite side.

COTTON, L.J.—In my opinion an order for a commission to examine witnesses abroad ought not to be made unless some reason is shewn why they cannot be examined here, nor unless the Court is also satisfied that there are material witnesses abroad whom the party wishes to examine. It should not be a mere roving commission to give the party a chance of finding evidence abroad. I think that in the present case it is shewn that there are material witnesses, who cannot reasonably be expected to come here unless there is some special reason why their examination should take place in this country. . . . As to the American lawyers it is urged, and, as it seems to me, correctly, that none whose opinion is worth having would come over here; and I think that a sufficient reason for directing a commission to examine American lawyers in America.

LINDLEY, L.J.—I think that all that is required to justify the issuing the commission is that it should be shewn that there are witnesses resident in America whose evidence is material, unless a case is made out why they should be examined here.

FRY, L.J.—I am of the same opinion. *

* Cf. *Bingham v. Henry*, 19 C. L. J. 223.

GILL V. WOODFIN.

Imp. O. (1875) 29, r. 10—O. 40, r. 11—Ont. r. 211, 322.

Judgment in default of defence—Defence delivered before judgment.

[L.R. 25 Ch. D. 707.]

A defendant made default in delivering a statement of defence, and the plaintiff gave notice of motion for judgment in default of defence. But before the motion was heard the defendant put in his statement of defence.

Held, that the statement of defence, though put in after time, could not be treated as a nullity, and that the plaintiff was not entitled to judgment in default of defence. But as the statement of defence disclosed no real defence to the action, the Court of Appeal ordered the notice of motion to be amended, and judgment to be given for the plaintiff on the admissions in the statement of defence.

NOTES OF CANADIAN CASES.

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QUEEN'S BENCH DIVISION.

Rose, J.]

REGINA V. YOUNG.

Conviction—Depriving of the use of property—32-33 Vict. cap. 21, sec. 110—Jurisdiction of Magistrate.

The defendant sold to C., amongst other things, a horse-power and belt, part of his stock in the trade of a butcher, in which he also sold a half interest to C. The horse-power had been hired from one M., and at the time of the sale the term of hiring had not expired. At its expiry M. demanded it, and C. claimed that he had purchased it from defendant. The defendant then employed a man to take it out of the premises where it was kept, and deliver it to M., which he did. The defendant was summarily tried before a Police Magistrate, and convicted of an offence against 32-33 Vict. ch. 21, sec. 110, D.

Held, that the conviction was bad, there being no offence against that section, and no jurisdiction in the Police Magistrate to try