

exchange, and also to set aside a conveyance as fraudulent, an order was made under Rule 739 for judgment on the money demand, with leave to proceed upon the other claim.

*Huffman v. Doner*, 12 P. R. 492, followed in preference to *Standard Bank v. Wills*, 10 P. R. 159.

*Hoyles*, for the plaintiff.

No one for the defendant.

MacMahon, J.]

[Oct. 1.

REGINA v. LAVIN.

*Warrant of commitment—Conviction—Variance—Motion to discharge prisoner—Enlargement—R. S. C. c. 176, s. 24.*

In determining upon a motion to discharge a prisoner whether a warrant of commitment is defective, the court cannot, in view of the Summary Trials Act, R. S. C. c. 176, go behind the conviction; and the proper course where there is a conviction sufficient in law, and a variance between the conviction and warrant of commitment, is to enlarge the motion so as to enable the magistrate to file a fresh warrant in conformity with the conviction.

Cases cited by WILSON, C.J., in *Arscott v. Lilley*, 11 O. R., at p. 167, referred to.

And where the conviction alleged that the offence was committed in January, 1887, and the commitment January, 1888, the motion was enlarged accordingly.

*Badgerow*, for the Crown.

*Bigelow*, for the prisoner.

Boyd, C.]

[Oct. 1.

WOLF v. OGILVY—*In re Hagar*.

*Lunacy—Intervention of official guardian—Consolidated Rules 335 to 338—R. S. O. (1887), c. 44, s. 32.*

Where a defendant in an action becomes of unsound mind after judgment, it is not proper to notify the official guardian to intervene without serving the defendant, and obtaining an order of the court by procedure analogous to that provided by Consolidated Rules 335 to 338.

But where a person has been found by the court to be of unsound mind, the official guardian may be served without order or notice to the lunatic.

Sec. 32 of R. S. O. (1887), c. 44, must be limited to causes mentioned in the marginal note thereto, which correctly defines the scope of the enactment.

*Langton*, for the plaintiff.

*J. Hoskin*, Q.C., for the lunatics.

*W. Barwick*, for the curator of the lunatic, Hagar.

Boyd, C.]

[Oct. 3.

*In re HORNIBROOK.*

*Sale of land—Order of court in infancy matter—Default of purchaser—Re-sale.*

In a matter pending before the court concerning the sale of infants' lands, an order was made directing the acceptance of an offer to purchase the lands. The purchaser having made default, the Master in Chambers made an order for payment of the purchase-money, and in default for a re-sale, and payment by the purchaser of any deficiency.

An appeal from this order on the grounds that the contract provided a penalty for default, viz., forfeiture of the deposit, and that the practice followed was not the proper one, as the sale was not under the standing conditions of the court, was dismissed.

*Masten*, for the purchaser.

*Beck*, for the vendors.

Armour, C.J.]

[Oct. 4.

CUTLER v. MORSE.

*Costs—Unnecessary counter-claim.*

To an action on a building contract the defendant set up the defence that the work was incompletely and unskilfully done, and counter-claimed for damages by reason thereof. The Master to whom the action was referred found that \$177 should be deducted for unskilful and incomplete work from the amount claimed by the plaintiff, and that the plaintiff had suffered damage to the extent of \$177.

*Held*, that the questions raised by the defendant might have been raised before the Judicature Act, and that he was not entitled to have the costs dealt with as if what he set up was properly a counter-claim.

*W. M. Douglas*, for the plaintiff.

*Middleton*, for the defendant.