

CANADA REPORTS.

ONTARIO.

NOTES OF RECENT DECISIONS.

PRACTICE COURT.

REG. V. FLANNIGAN.

*Certiorari to Magistrate to return conviction—
Procedendo—Delay.*

[WILSON, J., Mich. Term, 1872, and Hil. Term, 1873.]

A certiorari issued on 12th April, 1872, on motion of defendant to a Police Magistrate to return a conviction for selling liquor without licence. This writ was returned on 21st May, in Easter Term, with conviction and recognizance, and both defendants appeared to it by taking out rules. The prosecutor then obtained a rule nisi to quash the certiorari and for a procedendo to the Police Magistrate. But up to this time there had been no motion to quash the conviction.

It was urged by defendant that he had all the term within which to move against conviction, and that as the proceedings were removed into the Queen's Bench they must be finally dealt with there.

Held, 1. That the proper practice is that an appearance to the certiorari should be filed in the Crown office, and the case set down on the paper, so that either party might move for a *conclusion*.

2. That the defendant was in default in not having moved to quash the conviction, or set down the case on the paper.

Scilicet, that an affirmation of the conviction by the prosecutor is necessary to obtain the costs, and further, as this was not done, the court declined to estreat the recognizance.

A procedendo was awarded, it being thought more advisable that the Police Magistrate should enforce the conviction than the Court above.

COBLEIDGE V. BANK OF MONTREAL.

*Time when execution may issue after revision of
taxation, and generally.*

[WILSON, J., Hilary Term, 1873.]

A party who has to pay costs on a final judgment on verdict, nonsuit, demurrer or otherwise in the ordinary course of a cause, is not entitled to any time to pay them, after proper proceedings had to entitle the other party to collect them, nor is any demand for payment before execution required. A party entitled to costs may proceed to collect the same by execution, immediately after revision, without waiting a "reasonable time" for payment.

SMITH V. CRONK.

*Time for issuing execution for costs of day after
taxation.*

[WILSON, J., Hilary Term, 1873.]

Held, That a "reasonable time" need not be given in which to pay the costs of the day, &c., after taxation, but that the order, &c., may be made a rule of Court, &c., the day after taxation.

MACAULAY V. PHILLIPS.

*Notice of trial—Given in name of partner of plaintiff's
attorney—When required—Informal notice.*

[WILSON, J., Hilary Term, 1873.]

A. and B. were in partnership as attorneys, A. being the attorney on record in this suit. Notice of trial was given in the name of B.

Held, that the notice was irregular only, and not a nullity.

A notice of trial is necessary to be given in a cause to be tried, however that cause may go down for trial, whether as a *remand*, or put off from one assize to another by Judge's order, or taken down to trial by rule of Court, or Judge's order.

Scilicet, a notice of trial given in the partnership name would not be irregular, nor would a notice subscribed, "the plaintiff's attorney," without giving his name.

TULLY V. CHAMBERLAIN.

*Arbitration—Prejudiced Arbitrator—Revoking sub-
mission.*

[MORRISON, J., Easter Term, 1873.]

The arbitrator appointed by one of the parties having refused to act, he appointed a new arbitrator, who formerly acted as his attorney, but not in this suit.

Held, That the submission must be revoked.

COMMON LAW CHAMBERS.

REG. V. YEOMANS.

*Setting aside conviction—Variance between it and
warrant of commitment.*

[MORRISON, J., Feb. 7, 1873.]

On a motion to set aside a conviction and warrant of commitment on the grounds: (1) That the conviction was not in the Magistrate's office, but in that of the Clerk of the Peace; (2) that the conviction did not contain a clause of distress; and (3) that the conviction only warranted the imprisonment without hard labour, whereas, the prisoner had been committed *with* hard labour.

Held, That the prisoner must be discharged, but on the last ground only.