

C. L. Cham.] DUIT V. COSSETT.—WATTS V. HOBSON.—CERRIBY V. WELLS. [C. L. Cham.]

DUIT V. COSSETT.

Reference to arbitration.

Where an application is made to refer a case to arbitration after writ issued and before plea, and the defendant desires to plead payment into Court, the proper course is, not to order the cause to proceed that the payment may be set up by plea, but, from analogy to the old practice on payment into Court to strike the amount paid into Court out of the plaintiff's claim.

[Mr. DALTON—April 20.]

This was an application to refer the cause to arbitration under C. L. P. A. (Rev. Stats.) sec. 189.

Ewart moved the summons absolute.

Mr. Bull (Beatty, Chadwick & Biggar), *contra*, was willing to consent, but said that the defendant wished to plead payment into Court as to a portion of the demand, and asked that the cause should first be allowed to go to issue.

Mr. DALTON.—There is no need that the case should go to issue. I have, in other such cases, followed the practice which was formerly pursued before payment into Court was pleaded. That practice was to obtain an order to "strike the amount out of the declaration." The order of reference will direct that the amount paid in be deducted from the amount of the plaintiff's claim.

Order accordingly.

WATTS V. HOBSON.

Sale of equitable interests under execution—Costs.

Costs of an application to sell an equitable interest in lands under *fi. fa.* ordered to be taxed and endorsed as part of the costs of execution.

[Mr. DALTON—April 29, May 2.]

A summons had been taken out calling on the defendant to shew cause why his equitable interest in a certain parcel of land should not be sold by the sheriff under writ of *ieri facias* against the defendant's lands, under A. J. Act Rev. Stat. O., cap. 49, sec. 11.

Ogden moved the summons absolute, and asked for the costs of the application.

No cause was shewn.

Mr. DALTON.—I do not feel sure, but I think that the defendant should pay the costs of this application; but, to save expense, I direct that they be taxed, and inserted in the endorsement as part of the costs to be levied under the writ.

Order accordingly.

CERRIBY V. WELLS.

Order to examine—At issue.

An order to examine defendant granted in an action

of tort where interlocutory judgment had been signed for want of a plea.

[Mr. DALTON—May 1.]

Mr. Chamberlen (Richards & Smith) moved for an order to examine the defendant under the C. L. P. A. sec. 156, on an affidavit shewing that the action was an action for seduction, and that interlocutory judgment had been signed against the defendant default of plea.

MR. DALTON.—I will make the order; I do not think that the words "at issue," used in the statute, were intended to have any technical meaning, but were merely intended to mark the stage of the proceedings at which the order should be granted—*i.e.*, when the question which would be in issue at the trial should be known.

Order made.

WALKER V. TERRY.

Notice of trial—Irregularity—Amendment.

An irregular notice of trial was amended *nunc pro tunc* on the plaintiff's application, it not being shewn that the party served was misled.

[Mr. DALTON—May 13.]

A notice of trial was given for "the next sittings of Assize and Nisi Prius to be holden at the City of Belleville, in and for the County of Prince Edward, on," &c. (mentioning the day fixed for the sittings at Picton, in the County of Prince Edward). The venue in the action was laid in the County of Prince Edward, and the Belleville assizes were over when the notice was served.

Watson moved absolute a summons to allow the notice to stand good and to amend it *nunc pro tunc*.

Mr. Chamberlen (Richards and Smith), *contra*. Irregular proceedings have been allowed to be amended; but only in cases where defendants have applied to set aside proceedings. The defendant has a right to treat this as no notice at all. Moreover, his attorney swears that he cannot tell from it where the plaintiff intends going to trial.

Mr. DALTON.—From the notice alone perhaps the attorney is unable to discover where the plaintiff intended going to trial, but with his knowledge of the facts of the case, there can be no pretence that he has been misled. The practice is settled that, unless it is shewn that the party served is misled, the notice will be allowed to be amended *nunc pro tunc* on payment of costs. I allow the notice to be amended, and to stand good as of the date of its service, on payment of costs, which I fix at \$1.

Order accordingly.