

Prac.]

NOTES OF CANADIAN CASES.

[Prac.]

down for hearing by the Divisional Court, until the judgment in appeal is drawn up and settled, that the neglect to draw up the judgment did not extend the time for appeal.

But, as there was a *bona fide* intention of appealing, instructions had been given, the defendant lived in Texas, the judgment was complex, and the defendant had only twelve days exclusive of vacation to have it settled and the case entered, leave to appeal was granted on payment of costs.

J. MacLennan, Q.C., for the defendant,

Matthew Wilson, for the plaintiff.

Distinguished
Robert v. Ross,
1884.

Mr. Dalton, Q.C.]

[Sept. 11.]

RADMORE V. ELLIOTT.

Money paid into Court by defendant—Retaining money in Court—Rules 215 and 217, O. J. A.

The defendant paid money into Court in part satisfaction of the plaintiff's claim under Rule 215 O. J. A., but also disputed part of the plaintiff's claim. The defendant then applied under the words in Rule 217, "unless otherwise ordered by a judge" to have the money so paid in retained in Court to abide the event of the action, alleging that, if he succeeded in his defence, he could not recover costs from the plaintiff who was, he alleged, insolvent.

Held, that this would be in effect ordering security for costs, and the motion was refused, Shepley, for the motion.

Haverson, contra.

O'Connor, J.]

[Sept. 14.]

SCOTT V. WYE ET. AL.

Married woman—Judgment—R. 80, O. J. A.—47 Vict. ch. 19, O.

Held, that the "Married Women's Property Act, 1884" (47 Vict. ch. 19, O.) is not retrospective.

A motion under Rule 80, O. J. A. for judgment upon a promissory note against a married woman was dismissed in April, 1883, and was now renewed, fourteen months after the passing of the Act of 1884.

Held, that that Act made no change in the law which could assist the plaintiff, even if the matter were *res integra*.

Turnbull v. Forman, 15 Q. B. D. 234, followed. *W. H. P. Clement*, for the motion.

J. F. Smith, contra.

Ferguson, J.]

[Sept. 14.]

ROSS V. CARSCALLEN.

Setting aside judgment—Trial—Judge in Court at Toronto—Rule 270, O. J. A.

When the action came on for trial at Chatham the plaintiff together with his counsel and witnesses was absent, and the judge presiding at the trial pronounced judgment for the defendant.

Held, that the same judge had power under Rule 270, O. J. A., when sitting afterwards as the Court at Toronto, to set aside the judgment at the trial.

Hilliard v. Arthur, 10 P. R. 281, distinguished.

Raymond, for the plaintiff.

Moss, Q.C., for the defendant.

Mr. Hodgins, Q.C.]

[Sept. 18.]

Ferguson, J.]

[Sept. 21.]

RE ROGERS, ROGERS ET AL. V. ROGERS ET AL.

Master's office—Jurisdiction—Reference under order of Master-in-Chambers—Disputed lease—Fraud—Trial of issue—Rule 256, O. J. A.—Who should be plaintiff?

Held, that on a reference for partition or sale of lands directed by the Master-in-Chambers, the Master-in-Ordinary had no jurisdiction to try the question of the validity of a lease under seal from the intestate, set up as a ten years' lease by one of the heirs-at-law, who claimed that the lands should be sold subject to his lease; some of the other heirs-at-law disputing the validity of the lease, and alleging that it was either a five years' lease or that there had been a fraudulent alteration of the sealed instrument, there being an alteration in a material part apparent on the face.

The reference was adjourned till after the trial of the question raised, and an issue was directed by a Judge in Chambers, under Rule 256, O. J. A., to be tried at the next sitting for the trial of actions in the Chancery Division; the lessee to be plaintiff in the issue.