

Held, under the Judicature Act, the Court had a discretion to order the company to pay the costs. *Ex parte Mercer*, L. R. 10 Ch. D. 481 followed.

DANFORD V. MCANULTY.

Imp. O. 19, r. 15—Ont. r. 144—Action for recovery of land—Pleading possession—General principle of construction of Judicature Rules.

[L. R. 8 App Cas. 456.]

In an action for the recovery of land a statement of defence alleging that the defendant is in possession operates, by virtue of the above rule, as a denial of the allegations in the plaintiff's statement of claim, and requires the plaintiff to prove them.

The obvious intention of this exceptional rule seems to be to leave the defendant in an action for the recovery of land in the same position substantially as he was before the Judicature Act and Rules, that is to say, entitled to rely on his possession as a sufficient denial of the plaintiff's title and a sufficient answer until the plaintiff had proved his title, and then enabling the defendant to rely on any defence he could prove though he had not pleaded it.

The Judicature Rules are to be construed so as to discover the intention expressed in the rules, and it is not a legitimate ground of construction for the person or persons who drew the rules to say, "We wished and meant to express a particular intention." That is not a legitimate ground upon which to construe any instrument in writing.

NOTES OF CANADIAN CASES.

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QUEEN'S BENCH DIVISION.

Wilson, C. J.]

MCKNIGHT V. CITY OF TORONTO.

Municipal by-law — Nuisances — Prohibition against keeping swine and cows, validity of.

The defendants passed a by-law pursuant to R. S. O. ch. 174, sect. 466, sub-sect. 17, as amended by 44 Vict. ch. 24, sect. 12, which by-law, by sect. 2, provides that "no person shall keep, nor shall there be kept, within the City of Toronto, any pig or swine, or any piggery."

Held, that the by-law was *ultra vires* as being a general prohibition against the keeping of pigs, and not restricted to cases that might prove to be nuisances.

By sect. 3, sub-sect. 2, the by-law provided that no cows should be kept in any stable, etc., situate at a less distance than forty feet from the nearest dwelling-houses, and where two cows were kept that the stable should be not less than eighty feet from the nearest dwelling-houses.

Held, that it was unnecessary to declare expressly that the keeping of cows within such distances was or might be a nuisance, but that the prohibition was in effect such a declaration; that the distances prescribed were reasonable; and that the by-law as to that was unobjectionable.

Seem, that it was not bad in being so generally expressed that it would restrict the owner from keeping cows within the prescribed distances of his own dwelling-house, and

Held, that this objection not being clear should not at any rate be allowed to prevail in favor of the applicant, whose case was not shewn to be within the terms of the objections.

Read, Q.C., for applicant.

McWilliams, contra.

Cameron J.]

STAR KIDNEY CO. V. GREENWOOD.

Sale of medicinal composition—Representation as to curative properties—Discovery of ingredients.

Action on a promissory note given by the defendant in payment for a quantity of pads made by the plaintiff, and said to possess curative properties when applied to the body. The defence was that the note was obtained by fraud, and that the pads purchased were useless and possessed no healing properties. The defendant demanded production and discovery of the formula, or recipe, from which the pads were made, in order to show that they were valueless, which the plaintiff refused, on the ground that no representation was made as to their ingredients, that the composition was a secret not patented, and that discovery would injure them in their business.

Held, that the defendant was not entitled to the discovery.

Osler, Q.C., for the motion.

Bethune, Q.C., contra.