

Q. B. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div

NOTES OF CANADIAN CASES.PUBLISHED IN ADVANCE BY ORDER OF THE
LAW SOCIETY.**QUEEN'S BENCH DIVISION.**

IN BANCO.

WALMSLEY V. MITCHELL.*Seduction—Verdict for defendant—No costs.*

Where in seduction it is shewn that the injury in question is to some extent due to the plaintiff's wrongful conduct, and the jury find in favour of defendant, with the expression of a wish, however, that he should have no costs, the Court held that there was good ground under Rule 428, for withholding costs.

*Osler, Q.C., for application.***HYMAN V. BROWN.***Chattel mortgage—Omission to register—Assignment for creditors—Adding third party.*

W. gave chattel mortgage to plaintiff, and then assigned to defendant for creditors. The mortgage was not registered, and plaintiff, on refusal by defendant to deliver the goods to them, sued defendant, who then applied to have one M., a creditor of W., made a defendant, so as to question the mortgage. This was done, but the Court held the order bad, for when plaintiff demanded the goods, creditors had no right, and they could not by a subsequent assent make good their claim under the assignment.

*H. J. Scott, for appeal.**Gibbons and Aylesworth, contra.***CHANCERY DIVISION.**

Boyd, C.]

[April 2.

CARNEGIE V. FEDERAL BANK.*Pleading—Admissions—Master's office—Pledge of stock—Ear-mark—Identification of pledged stock.*

By his statement of claim in this action the plaintiff set forth that during April and May, 1878, the Federal Bank lent money to him, and

on April 23rd, 1878, he gave the bank, as security, assignments of Ontario Bank stock, and of Bank of Commerce stock; that soon after the making of this loan the defendants sold the Bank of Commerce stock and credited the proceeds; that the defendants did not hold the Ontario Bank's share during the currency of the loan, but soon after the making of it, disposed of that stock without notice to the plaintiff, and by such sales received more than enough to pay off the balance, and the plaintiff asked for an account.

Upon this pleading the parties went to trial upon admissions, shewing that the Ontario Bank stock in question was in the hands of the defendants at the date of the loan, April 23rd, 1878.

In the Master's Office it was discovered, and for the first time brought to the recollection of both parties, that the Ontario Bank shares in question had been pledged by the plaintiff with the bank some months previously on another loan, and had been carried forward to the loan of April 23rd, and, on this state of facts, an issue was raised in the Master's Office as to whether the bank actually did hold the shares on that day, the plaintiff contending that it had previously parted with them and was therefore liable to be charged with their market value as of that day. The master held that the pleadings precluded him from going behind April 23rd.

Held, on appeal, that the master had rightly decided, for the admissions, which were evidence for all purposes in the Master's Office, could not be inferentially or argumentatively countervailed by detached parts of contradictory evidence going to shew that the defendants had previously disposed of 160 shares of the Ontario Bank stock, and were in default at the date of the loan—April 23rd. What the plaintiff was now seeking was to place the parties in this position: the plaintiff was induced to accept a loan from the bank on the representation that the bank had stock security for that loan in their hands, whereas, in fact, that security had been already sold, and the bank was indebted to the plaintiff for the proceeds of that stock, and should account on that footing. This was a very different state of facts from what was spread on the record, and disclosed a different cause of action.