

[Prac.]

NOTES OF CANADIAN CASES.

[Prac.]

O'Connor, J.]

[Dec. 18, 1885.]

MCLEAN V. HAMILTON STREET R. W. CO.

Excluding counter-claim—Causes of action—Trial—Negligence—Libel.

Held, that it would be extremely inconvenient and inexpedient to try in one suit two causes of action in tort, each of which depends on nice distinctions of law and fact, and in one of which the Judge controls the law and the jury the facts, while in the other the jury are judges of both the law and the fact; and a counter-claim for libel in an action for negligence was therefore excluded.

Aylesworth, for the plaintiff.

E. E. Kiltson, for the defendants.

Boyd, C.]

[Dec. 21, 1885.]

PEEL V. PEEL.

Scale of costs—Surrogate Court—Case transferred to High Court.

In the case of an action transferred from a Surrogate Court to the High Court of Justice, the costs of the proceedings in the Surrogate Court previous to the transfer should be taxed on the scale provided by the Rules of 1858, *i.e.*, as nearly as possible on the County Court scale.

Re Harris, 24 Gr. 459, and *Re Osler*, 24 Gr. 529, explained and followed.

Hoyles, for the plaintiff.

R. M. Meredith, for the defendant.

C. P. Div.]

[Dec. 19, 1885.]

CANADIAN PACIFIC R. W. CO. V. GRANT.

Claim and counter-claim—Cross judgments—Set-off—Solicitors' lien.

The plaintiffs sued for freight for the carriage of timber, and the defendant pleaded a counter-claim for neglect and delay in the carriage of the timber.

The judgment at the trial was as follows:—"The verdict will be for the plaintiffs for \$2,122, and for the defendants upon their counter-claim for \$1,420; and each party will be entitled to costs against the other, as if the statement of claim and counter-claim were separate actions; and I direct that judgment be entered accordingly."

Held (reversing the decision of the Master in Chambers), that the judgments recovered by the plaintiff and defendant must be treated as judgments in separate actions; and therefore that, in setting off the judgments, the lien of the defendant's solicitors upon the judgment against the plaintiffs for costs should be protected.

Watson, for the plaintiffs.

Wallace Nesbitt, for the defendant.

Rose, J.]

[Dec. 22, 1885.]

MCNABB V. OPPENHEIMER.

Rescinding order for ca. sa.—Jurisdiction of Judge who made the order—Discharging defendant.

A Judge in Chambers has no power to rescind his own order for a writ of *ca. sa.*, or to discharge the defendant from custody, after the order has been acted upon.

Masten, for plaintiff.

T. C. Milligan, for defendant.

Boyd, C.]

[Dec. 23, 1885.]

RE ENGLISH.

Settled Estates Act—Separate examination of married women—M. W. P. Act, 1884 (O.)

In a petition under the Settled Estates Act the separate examination required by the Act of a married woman living out of the jurisdiction was dispensed with in order to avoid delay and save expense; but the examination of married women within the jurisdiction was not dispensed with, where no special circumstances existed.

The Married Women's Property Act, 1884 (O.), does not apply to cases under the Settled Estates Act, where the woman had acquired the property before that Act (the M. W. P. A.)

William Roaf, for the petitioner.