

Prac.]

NOTES OF CANADIAN CASES—CORRESPONDENCE.

PRACTICE.

C. P. Div. Court.]

[June 26.

IRELAND V. PITCHER.

Action against magistrates—Costs, scale of—R. S. O. ch. 73, secs. 12, 18, 19—Appeal from taxation—Time—Rule 427 O. J. A.

In an action against Justices of the Peace for false imprisonment, etc., the Divisional Court (10 O. R. 631) ordered judgment to be entered for the plaintiff for \$25, the damages assessed by the jury, leaving the costs to be taxed according to such scale and with such rights as to set-off as the statute and rules of court might direct. Upon appeal from taxation,

Held (CAMERON, C.J., *dubitante*), that the effect of R. S. O. ch. 73, sec. 19, read in connection with sec. 12 of that Act, and with R. S. O. ch. 43, sec. 18, sub-sec. 5; R. S. O. ch. 47, sec. 53, sub-sec. 7; and R. S. O. ch. 50, sec. 347, is not to provide that the plaintiff should have costs on the Superior Court scale when his recovery is within the competence of an inferior court.

Per CAMERON, C.J.—The case came under sec. 18 rather than 19 of R. S. O. ch. 73.

Per Curiam.—The action was within the proper competence of the Division Court, and the plaintiff should have costs only on the scale applicable to that court, and the defendants should have their proper costs by way of deduction or set-off.

Appeals from taxation should be brought on within a reasonable time, and within eight days—the time limited for appeals—under rule 427 O. J. A., is a reasonable time.

Stark v. Fisher, 11 P. R. 235, and *Quay v. Quay*, 11 P. R. 258, approved.

Aylesworth, for the appeal.

Beck, contra.

CORRESPONDENCE.

ULTRA VIRES.

RAILWAYS TO THE PROVINCIAL BOUNDARIES.

To the Editor of the LAW JOURNAL:

SIR,—Can a Provincial Legislature, under the British North America Act, validly create a company with power to construct a line of railway running to the boundary of the Province?

This is a question that has been much debated of late years, more especially in connection with the repeated disallowance of Manitoba railway charters, and it is with the hope of removing some of the doubts thrown around it by the politicians that I write this letter. Let me first set down the language of the B. N. A. Act governing the subject.

Sec. 92. In each Province the Legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated, that is to say—

ss. 10. Local works and undertakings other than such as are of the following classes:

(a) Lines of steam or other ships, railways, canals, telegraphs, and other works and undertakings connecting the province with any other or others of the provinces, or extending beyond the limits of the province.

(c) Such works as, although wholly situate within the province are, before or after their execution, declared by the Parliament of Canada to be for the general advantage of Canada, or for the advantage of two or more of the provinces.

Now I find it difficult to see in this language anything to prevent a local legislature from authorizing a railway to be constructed and operated from any one point in the province to any other point therein, even if one or both of such points is or are on the very border.

Such a railway is not a road "connecting the province with any other province or extending beyond the limits of the province," however much the promoters may wish or intend to form such connection or extension afterwards. The latter element has nothing whatever to do with the question of the power to legislate as aforesaid. But the framers of the B. N. A. Act evidently foresaw that a provincial line, though wholly within the Province, might be made part of a system connecting two provinces or connecting a province with a foreign country; and they therefore reserved the power to the Parliament of Canada, after declaring such work to be for the general advantage of Canada or for the advantage of two or more o