

Q. B.] NOTES OF CASES. [Chan. Cham.

Q. B.] [Dec. 1.] Spragge, C.] [Nov. 24.]

SCHLESWYER v. DAVIS.

Guarantee for payment of rent—Action n.

To an action on a guarantee given to secure the payment of rent, defendant pleaded that, without his knowledge or consent, the plaintiff accepted a surrender before the expiration of the term, and that there were then goods and chattels upon the premises, liable to distress, more than sufficient to pay the distress.

Held, that the plea was no defence, as a landlord holding such a guarantee is not bound to distrain before suing the sureties.

Brown and Falconbridge for the appellants.

Kerr, Q. C., for the respondent.

Appeal dismissed.

QUEEN'S BENCH.

IN BANCO.

MICHAELMAS TERM, 1879.

HICKS v. SNIDER.

Will—Construction—Estate in fee.

Testator devised as follows: "I make and give all my property, both land, house and all the stock, and every other article I possess now, to my loving wife Elizabeth, by making her my executrix."

Held, that the wife took an estate in fee.

Wallbridge, Q. C., for plaintiff.

Reeve, contra.

CHANCERY CHAMBERS.

Referee.] Nov. 15.

CONNOLLY v. O'REILLY.

Costs on appeal—Sum in gross in lieu of—Practice.

An order allowing \$400 to be paid into Court by appellant, in lieu of bond, will be granted *ex parte*.

In this case *Hoyles*, for appellant, moved *ex parte* for leave to pay \$400 into Court, as security for the costs of appeal.

The Referee made the order.

CLARK v. CLARK.

Partition—Land in different Counties—G. O. 641—Costs—G. O. 643.

In this suit an order for partition of lands in County of Peel, had been made by the Master at Brampton, under General order 640.

Fleming now moved, under G. O. 641, for the sale or partition, under said order of the Master, of certain lands in County of Grey. It appeared that the Grey lands were not discovered, after the granting of the order by the Master, but were known at the time of the making thereof.

Plumb for the infants.

SPRAGGE, C., *held* that the case was within the scope and intention of order 641, notwithstanding the use of the words "after an order, &c., lands are discovered in another county."

Held, also, that the case was a proper one for the exercise of the discretion of the Court or Judge, reserved under 643, and costs of the application were allowed, exclusive of commission fixed in the order.

Referee.]

[Nov. 28.]

STEPHENSON v. BAIN.

Sale under decree—Loss after contract signed—Who bears.

Lands were sold under decree for partition or sale in the cause. The purchaser signed the usual contract on the day of sale to purchase the property at \$1,500. The day after the sale the hotel buildings, of which the property was composed, were burned down. The report on sale was made and confirmed. The land, without the building, was worth about \$300. The purchaser had paid his deposit on day of sale, and this application was to compel payment into Court of the balance of purchase money.

Hoyles, for the plaintiff, contended that the English cases in point did not apply, because here an absolute agreement to purchase is entered into, whereas in England only a bidding paper is signed. See *Daniel's Chy. Prac.* p. 1161, and *Daniel's Forms*, p. 1328, and G. O. 384; that the English