

Cham.]

NOTES OF CASES.

[Cham.]

*Held*, also that a *capias* is now a proceeding in a suit, and that the action must be commenced by writ of summons.

*H. J. Scott*, for defendant.

*Perdue*, for plaintiff.

Proudfoot, J.]

[Oct. 18.]

BARKER V. FURZE.

*Notice of trial—Chancery Division—Special Sittings—Entry of Action—Rule 266.*

Thirteen days' notice of trial was give for a special sitting appointed to be held at Walkerton for the trial of actions in the Chancery Division. The Official Referee set aside this notice on the ground that Rule 266 required fourteen days' clear notice to be given, according to the Chancery practice.

*Held*, on appeal, reversing his decision, that Rule 266 refers only to the officer with whom the entry of action for such trial should be made, and that it left the time for entry, and the length of the notice of trial, to be determined by the preceding rules; ten days' notice of trial was, therefore, held sufficient.

*W. S. Gordon*, for the appellant.

*Langton*, contra.

Osler, J.]

[Oct. 20.]

REGINA V. ALLBRIGHT.

*Liquor License Act—Certiorari—Hard labour—Amendment of conviction.*

Defendant was convicted for the third time of having sold liquor without a license, and was sentenced by a magistrate to three months imprisonment with hard labour.

*Held*, that the magistrate had not power to impose hard labour, the provision in that behalf in The Ontario Liquor License Act being *ultra vires*.

Where a conviction is irregular in the sentencing part, and an application is made on a certiorari to quash it, the Court will not grant an amendment of the conviction.

*Foster*, for the prisoner.

*Hodgins, Q. C.*, contra.

Mr. Stephens.]

[Oct. 24]

SAWYER V. SHORT.

*Notice of trial—Replication unnecessary—Rule 494.*

Where a cause in the Court of Chancery was, on the 22nd of August last, at that stage when notice of motion for a decree or replication could have been served or filed, and no such notice or replication had up to that time been served or filed, the cause should thereafter proceed under the Judicature Act, and notice of trial may be given and the case set down without a replication being filed.

*Hoyles*, for the motion.

*H. Cassels*, contra.

Osler, J.]

[Oct. 25.]

IN RE TURNER &amp; THE IMPERIAL BANK.

*Division Courts Act 1880—Interpleader—Appeal.*

There is no right of appeal from the decision of the Judge in an interpleader suit in a Division Court, even when the amount in dispute exceeds \$100.

*Shepley*, for defendant.

*Haverson*, for plaintiff.

Boyd, C.]

[Oct. 31.]

RE PETER FLEURY : FLEURY V. FLEURY.

*Partition—Motion for distribution—Costs and disbursements on—G. O. 640.*

Proceedings had been taken for the partition and administration of the estate of Peter Fleury, deceased.

This was a motion for distribution under the report of the Master at Lindsay.

*Crickmore*, for plaintiff, asked that a lump sum be allowed him for the costs and disbursements of the motion.

*Watson*, for executors, objected that such costs were included in the commission allowed under G. O. 640, and that the disbursements should have been included in those allowed on the fixing of the commission, and no charges of any kind could under the practice be allowed as a separate sum on this application.

*Boyd, C.*, made the usual order and declined