

the verdict was upheld and appeal dismissed with costs. In 1896 the defendant issued a *fi. fa.* for the costs. The plaintiff's attorney applied to set the *fi. fa.* aside, and for a day of proceedings, and the defendant's attorney being present in court, heard the application. He withdrew the first execution and issued a second one. The plaintiff's attorney moved the Court in Hilary Term to set aside the judgment on the ground that the cause had never been entered, and failing that, to set aside the writ of *fi. fa.* on the following grounds :

- (1) That the writ of *fi. fa.* was not issued within a year and a day.
- (2) That the attorney issuing the *fi. fa.* was in contempt, inasmuch as he was present in Court, and knew that a stay of proceedings had been granted in the matter.
- (3) That no memorial of judgment had been recorded within five years from the signing of the said judgment.

Cap. 8, Acts 1880, s. 8, provides: "That during the lives of a party to a judgment, or those of them during whose lives execution might formerly have issued within a year and a day without a *scire facias*, writs of execution may be issued within a period of twenty years from the signing of such judgment, without the revival of the judgment." Sec. 10 provides, "the provisions of this Act shall apply to all suits now *pending* in which a plea or pleas have not been delivered," but not to "any suit *now pending*" in which a plea or pleas had been delivered. In this case the pleas had been delivered before the passing of the Act.

*Held*, (1). That the plaintiff was estopped, after contesting the case at the trial, and arguing the appeals, from taking advantage of his own neglect to enter the cause.

- (2). That defendant's attorney was not in contempt.
- (3). That the 10th sec. of cap. 8, Acts 1880, must be held to apply to the provisions in that chapter enabling a defendant to give notices of defence, and not to section 8.

*Carleton*, for the motion.

*Coster*, contra.

## EQUITY COURT.

JONES ET AL. v. RUSSELL.

It may be useful to note here the authorities cited on the argument of this case before Mr. Justice Tuck, a mem. of which was sent to us after the publication of the note of this case as it appears *ante*, p. 131 :—*Clark v. Addy*, 10 Ch. App. 676, 2 Appeal Cases 423 ; *Curtis v. Platt*, 3 Ch. Div. 135 ; *Proctor v. Bennis*, 36 Ch. Div. 740 ; *The Ticket Punch and Register Co. v. Colby's Patents*, 11 Times Law Reports 262 ; and *Dudgeon v. Thompson*, 3 Appeal Cases, 44.