

Prac.]

NOTES OF CANADIAN CASES.

[Prac.]

Held, there being a part performance of defendant's agreement by retaining plaintiff for a time, there could be no rescission of the whole contract, that plaintiff was entitled to a return of his shares, defendant to judgment for the value of the seventy-six shares, and plaintiff must sue in a separate action for the dismissal.

Osler, Q.C., and *Nesbitt*, for plaintiff.

Robinson, Q.C., and *Biggar*, contra.

PRACTICE.

Mr. Dalton, Q.C.]

[April 30.]

WELLER V. PROCTOR.

Notice of trial.

On the 24th of April the plaintiff filed and delivered a reply with two paragraphs, in the first of which he denied directly certain allegations in the fourth paragraph of the statement of defence, and in the second he joined issue upon the balance of the defence. Notice of trial was served same day.

Aylesworth, now moved on notice to set aside the notice of trial on the ground of irregularity in that the same was given prematurely before the pleadings in the action were closed.

Holman, contra, contended that it was not negatived in the affidavit filed in support of the motion that no joinder was filed when notice of trial given; that so far as the affidavit showed a joinder might have been put in by the defendant on the 24th of April, and that the first paragraph of the reply was equivalent to a joinder of issue in that it was a simple denial of an allegation in the Statement of Defence.

The MASTER IN CHAMBERS held that the material filed was insufficient to support the motion, and while expressing opinion that the joinder of issue referred to in Rule 176 O. J. A., was the well recognized form of joinder of issue and not simply a denial of a previous pleading, dismissed the motion without costs.

Proudfoot, J.]

[Sept. 22.]

RINGROSE V. RINGROSE.

Costs—Action for alimony—R.S.O. c. 40, sec. 48.

Pending an action for alimony, and before trial, the plaintiff returned to live with the defendant.

Held, that an order for the payment by the defendant of the costs of the plaintiff's solicitors should be restricted to the cash disbursements of the solicitors.

Leonard v. Leonard, 9 P. R. 450, *Moore v. Moore*, 4 C. L. T., overruled.

Elgin Myers, for the defendant.

W. H. P. Clement, for the plaintiff's solicitors.

Osler, J. A.]

[Sept. 23.]

McLAUGHLIN V. MOORE.

Examination of parties—Action for breach of promise—45 Vict. c. 10, sec. 3 (O).

Held, that since 45 Vict. c. 10, sec. 3 (O), the parties to an action for breach of promise of marriage are both competent and compellable witnesses.

Aylesworth, for the defendant.

W. H. P. Clement, for the plaintiff.

Mr. Dalton, Q.C.]

[Sept. 26.]

McLAREN V. CANADA CENTRAL RAILWAY.

Judgment—Interest—Rule 326, O. J. A.

On the 23rd day of January, 1882, judgment was pronounced in Court by Osler, J., in the following words:—

"I direct judgment to be entered for the plaintiff against the within named defendants, after the 5th day of next Hilary Sittings, for \$100,000."

Judgment was formally entered with the Clerk of the Court upon the 24th day of March, 1882, but was dated as of the 23rd day of January, 1882.

Upon a special case submitted for the decision of the Master in Chambers as to whether interest was to be computed from the 23rd January or the 24th March.

Held, that Rule 326, O. J. A. does not apply where, as in this case, the judgment itself regulates the entry, and interest must be computed from the time of the actual entry of the judgment. *Kelcher v. McGibbon*, 10 P. R. 89, distinguished. The judgment was amended by causing it to bear date on the day of the actual entry.

W. H. P. Clement, for the plaintiff.

A. H. Marsh, for the defendants.