

Prac.]

## NOTES OF CANADIAN CASES—CORRESPONDENCE.

the assignee took actual possession, as without it verbal authority would be insufficient; nor for like reason would goods warehoused for, and held by a bank, where the assignee notified the bank, of the assignment, and they agreed to hold the surplus for the assignee after payment of the bank's claim.

Held also, that the omission of some part of the assignee's estate from the assignment does not render it invalid.

Held also, the postponing the assignment until certain favoured creditors had obtained judgment deed execution did not invalidate the assignment.

Gibbons, for the plaintiff.

Street, Q.C., for the defendant.

## PRACTICE.

Ferguson, J.]

[Sept. 2, 1883.]

EDWARDS V. PEARSON.

Costs—Costs in the cause—Taxing officer—Rule 442 O. J. A.

When costs are made costs in the cause by an order of the Master in Chambers, a taxing officer cannot disallow them under the powers vested in him by Rule 442, O. J. A.

*Dominion, etc., Co. v. Stinson*, 9 P. R. 177 distinguished.

Black, for the plaintiff.

Hoyle, contra.

## CORRESPONDENCE.

## CLERK'S FEES ON TRANSMISSION OF PAPERS TO THE JUDGE.

To the Editor of the LAW JOURNAL.

SIR,—Sometime since I was speaking to you about a question of clerks charging fee of twenty cents, under item 23 of the tariff of 1880, as established by the County Court Judges as the fees to be charged by clerks, and you kindly said you would insert any remarks I might wish to make in one of your issues.

The case in which I wish you to give an opinion, is one of this kind: You are aware that rule 161 of O'Brien's Division Court Manual of 1879, page 323, reads thus: "When upon the application of any plaintiff having an unsatisfied judgment in his

favour, a transcript of the entry of such judgment under section 139, or a transcript of the judgment under section 142 of the Act, is issued from the Court in which the judgment has been recovered, an entry thereof shall be made by the clerk in the Procedure Book, and no further proceedings shall be had in the said Court upon the said judgment, without an order from the judge."

Under this rule an application was made to a judge *ex parte*, on affidavit for leave to proceed in the home county, in a suit where the transcript had been sent to Hamilton for enforcement, and had been returned to the home Court, say at Toronto, *nulla bona*, the defendant having moved back to the original county where he was served. The plaintiff, wishing to proceed, made the necessary affidavit that the judgment was unpaid, and the defendant again in the county where he was originally served, and got the judge's order in Chambers endorsed on said special affidavit. The plaintiff took the affidavit to the clerk's office, and asked him to enter the judge's order as endorsed upon the affidavit, allowing further proceedings to be taken in the original Court, and tendered the clerk fifteen cents for the entry of the order, but the clerk demanded twenty cents for the transmission of the affidavit to the judge independent of the said fifteen cents.

The clerk would not enter the order unless he was paid this extra twenty cents, and the plaintiff paid the twenty cents, under protest, to the clerk.

Now you will see that the affidavit referred to was never in the clerk's hands, nor transmitted by him in any way, nor was the judge's order obtained through his procurement. He did not earn the twenty cents by any act which he had done; the only act done on his part being the entry of the judge's order, endorsed on said affidavit. The question involved is: Has a clerk the right to charge under said item 23 of the tariff of 1880, twenty cents for work which in fact he never did, and is a plaintiff in the Division Court obliged to take every affidavit in which he makes a chamber application, to the clerk's office first, and have him transmit the affidavit to the judge for his order, and pay him twenty cents for this particular transmission?

You will easily see that there are many chamber applications which may be made to the judge on the spur of the moment, as for instance, for a garnishee order (which was in fact the cause of the application in this particular case), or in a case of an application for an order to replevy goods where there is no danger of losing them, or in the case of an application for an order for substitutional service. Is a plaintiff in such cases obliged to leave