

[Prac.]

NOTES OF CANADIAN CASES.

[Prac.]

Osler, J. A.]

[Jan. 6.]

BROWN V. NELSON.

The order of Mr. Dalton, Master in Chambers, noted *ante* vol. 20, p. 390, directing a set-off *pro tanto* of the plaintiff's costs against the defendant's judgment on his counter-claim affirmed on appeal.

Wallace Nesbitt, for the appeal.

C. R. W. Biggar, contra.

Rose, J.]

[Jan. 12.]

POWELL V. LONDON ASSURANCE CO.

POWELL V. QUEBEC INSURANCE CO.

Jury notice—Application for leave to file—Costs.

The plaintiff omitted to file a jury notice with his last pleading, and applied *ex parte* to the Master in Chambers for leave to withdraw the last pleading and re-file it with a jury notice. The leave was granted. On appeal from the order granting leave,

Held, that when the plaintiff came to the Court to be relieved from his slip he should have been called upon to show that the case was one which should be tried by a jury and that unless he had been able to do so the defendants should not have had their statutory right to have the case tried by a judge without a jury taken away.

Held, also that notice of the motion should have been given to the defendants in accordance with the spirit of Rule 406, O. J. A. On such a motion costs should be refused to a party who appears merely to ask for costs.

The appeal was treated as a substantive motion for leave to file the jury notice and the order of the Master was affirmed without costs.

Charles Millar, for the defendants.

W. A. Foster, for the plaintiff.

Rose, J.]

[Jan. 12.]

THE QUEEN V. SCOTT.

(2 cases.)

Certiorari—Right of defendant to—32 & 33 Vict. (C.) c. 31, sec. 71 and 33 Vict. (C.) c. 27, sec. 2.

The defendants having been convicted by the Police Magistrate of Chatham of an offence against the provisions of C. S. C. cap.

95, appealed to the Quarter Sessions, and the convictions were affirmed in appeal.

The defendants now applied for a *certiorari* to remove the convictions notwithstanding that 32 & 33 Vic. (C.) c. 31, sec. 71 as amended by 33 Vic. (C.) c. 27, sec. 2., expressly takes away the right to *certiorari* where there has been an appeal to the Quarter Sessions.

The defendants contended that the right to *certiorari* was not taken away because the evidence did not disclose any offence; the decision in *Regina v. Dodds* showed that the evidence taken in these cases proved no such offence as was set out in the convictions, and hence the magistrate had no jurisdiction.

Held, that where the magistrate has jurisdiction over the offence charged, and the right to *certiorari* is taken away, the Court cannot examine the evidence to see if the Magistrate had jurisdiction to convict.

Certiorari refused.

Langton, for the defendants.

Cartwright, for the Crown.

Mr. Dalton, Q.C.]

MCCULLOUGH V. SYKES.

Judgment—Revivor—Statute of limitations—Scire facias.

Judgment recovered in 1856.

Order to revive by entering suggestion on roll under C. L. P. A. by Mr. Justice Morrison on 23rd Oct., 1869.

Suggestion entered 22nd Jan., 1870.

No execution issued since that date.

On 6th Dec., 1884, C. E. Jones obtained from Master in Chambers an order for plaintiff to issue execution under Rule 255 O. J. A.

G. F. Harman moved to set aside order for execution on ground that judgment barred by Statute of Limitations.

THE MASTER IN CHAMBERS dismissed the application with costs on ground that entry of suggestion under C. L. P. A. gives a new starting point for the statute to run from, and that the period of limitations on judgment is twenty years under R. S. O. cap. 61 and not ten years under R. S. O. cap. 128. *Allan v. McTavish*, 2 A. R. 278, *Boice v. O'Loan*, 3 A. R. 161, commented on and followed.

C. E. Jones, and George Bell, for plaintiff.

G. F. Harman, for defendant.

Hector Cameron, Q.C., for garnishee.