

Com. Pleas.]

NOTES OF CANADIAN CASES.

[Com. Pleas.]

issue to be tried under Rule 370 O. J. A. as to the garnishee's indebtedness.

*Walker* (of Hamilton), for the plaintiff.

*J. G. Scott, Q.C.*, for the garnishee.

The form of the issue was subsequently settled by the Registrar, namely, whether at the date of the service upon the garnishee of the attaching order there was any debt due, or accruing due, from the garnishee to the defendant.

[February 3.]

An appeal to the Divisional Court by the garnishee to change form of issue was dismissed, the Court holding that the issue, as settled by the Registrar, was sufficient.

*J. G. Scott, Q.C.*, for the appeal.

*Clement, contra.*

Rose, J.]

[Feb. 12.]

## REGINA V. HOLLISTER.

*Market by-law—Conviction under—Costs.*

A by-law required "all hay, straw, grain, coal, farm produce and animals sold at the market or elsewhere in the town of Cornwall which is required to be weighed by the vendor or purchaser to be weighed by public weigh scales." A conviction under this by-law was that the defendant "brought into the town of Cornwall" certain hay, etc., "and had the same weighed on scales other than the public scales of said town, the same being a contravention of the market by-law and amendments thereto of said town."

*Held*, that the conviction was bad in not stating that the hay was "sold at the market or elsewhere," and must therefore be quashed.

As the complainant was the weighmaster, and had instituted the prosecution for his own benefit after warning, instead of bringing an action in the Division Court he was ordered to pay the costs.

*Aylesworth*, for the applicant.

*Cattanach, contra.*

Rose, J.]

[Feb. 17.]

## MACFIE V. PEARSON.

*Attachment under Absconding Debtors' Act—Creditors' Relief Act.*

On 27th September, 1884, the sheriff seized certain goods of the defendant under two writs of execution. On the 30th a writ of attach-

ment against defendant as an absconding debtor was issued and placed in his hands under which he seized all the defendant's property, credits and effects. On 1st and 2nd October two more writs of attachment were placed in his hands. On 13th October the sheriff sold under the two executions and realized enough to satisfy them, which moneys remain in his hands pending these proceedings. On 20th October the sheriff received a certificate issued under and pursuant to the Creditors' Relief Act, 1880, and on the 24th of same month received a further certificate under the said Act. On 26th he sold the balance of defendant's property, etc., so seized by him, and realized the sum of \$2,908.37 for, as he said, distribution amongst the creditors. After this, various executions and certificates were received by him. On the 14th October the sheriff, pursuant to the Creditor's Relief Act, made the entry in his book. The attaching creditors had not placed executions in the sheriff's hands.

*Held*, that the proceedings under the Absconding Debtors' Act were entitled to prevail as against those under the Creditors' Relief Act; and that the creditors who had certificates under the Creditors' Relief Act should obtain judgment and execution in the ordinary way so as to come within the provisions of the Absconding Debtors' Act.

*Street, Q.C., H. J. Scott, Q.C., Gibbons, Clements, Shepley and Henderson*, represented the various parties.

Divisional Court.]

[Feb. 28.]

## CLARKE V. RAMA TIMBER AND TRANSPORT COMPANY.

*Canal—Dam—Damages by water overflowing plaintiff's land—Findings—New trial.*

The defendants built a canal from a point on the St. John River to Lake St. John, and from thence to Lake Couchiching, under power conferred therefor by their act of incorporation, 31 Vict. ch. 66. The plaintiffs owning land near Lake St. John brought an action against defendants, claiming: (1) That by the erection or continuance of a dam by defendants in the bed of the St. John River, which was the natural outlet of the said Lake St. John, the waters of said lake were prevented