

PRACTICE—AMENDED WRIT—SERVICE OF AMENDED WRIT ON DEFENDANT WHO HAS NOT APPEARED—DISCRETION OF COURT TO REQUIRE PERSONAL SERVICE ON NON-APPEARING DEFENDANT.

In *Jamaica Railway Co. v. Colonial Bank* (1905) 1 Ch. 677 a writ of summons had been amended, no special directions having been given as to service of the amended writ on a defendant who had been previously served with the writ, but who had not appeared. The plaintiff served it on this defendant by filing it in the office of the Court, under Rule 1015 (see Ont. Rule 573). On the action coming on for trial it was objected that this defendant should have been personally served with the amended writ, and Eady, J., allowed the objection. The Court of Appeal (Williams, Romer, and Stirling, L.JJ.), however, held that there is no hard and fast rule that in all cases where a writ is amended after service on a defendant who has not appeared, that the amended writ shall be personally served on such defendant; on the contrary, it is a matter in the discretion of the Court to require it or not, according to the nature of the amendment allowed; and that such a direction should be given in the order allowing the amendment, wherever it may appear that there is any probability of such defendant suffering any injustice, *e.g.*, where the plaintiff's claim against him is substantially changed or enlarged by the amendment. In this case the appeal was allowed, and the case remitted for trial.

WILL—LEGACIES GIVEN "FREE FROM DUTY"—DEFICIENT ESTATE—ABATEMENT OF LEGACY.

In *re Turnbull, Skipper v. Wade* (1905) 1 Ch. 726, a testatrix who made her will in 1893 and died in 1903 bequeathed numerous pecuniary legacies "free from duty." Her estate proved insufficient to pay all the legacies and duty in full; and for the purpose of abatement it was held by Farwell, J., that the duty payable in respect of each legacy should be added thereto as an additional legacy.

LANDLORD AND TENANT—FORFEITURE WHERE HALF A YEAR'S RENT IN ARREAR—MORTGAGE OF UNDER-LEASE—RELIEF AGAINST FORFEITURE—PARTIES—C. L. P. ACT 1852, ss. 210, 211, 212—(R.S.O. c. 170, ss. 20-23).

*Humphreys v. Morten* (1905) 1 Ch. 739 was an action by a mortgagee of an under-lease against a lessor and a mortgagor to be relieved from a forfeiture occasioned by the non-payment of rent under the head lease. The lessor opposed the plaintiff's right to relief on the ground that neither the lessee nor assignee of the