

[Chan.]

NOTES OF CASES.

[Cham.]

veyor is authorized to apportion the quantities lying between two defined or known boundaries. Therefore, where the original monument or post planted as indicating that the north-west angle of a lot was situated at a distance of half a chain south therefrom, and another surveyor had actually planted a post at the spot so indicated, and subsequently two surveyors, in total disregard of the two posts so planted, both of which were easy of ascertainment, made a survey of the locality and placed the posts at a different spot, the Court [SPRAGGE, C. J. O.] disregarded the survey, and declared the north-west angle of the lot to be as indicated by the first mentioned monuments.

[These cases were heard before the Chief Justice of Ontario when Chancellor.]

Boyd, C.]

[Oct. 26.]

BURROWS v. DEAVENS.

*Conveyance by illiterate person—Misrepresentations to party executing a deed—Husband and wife.*

A married woman, who could neither read nor write, and was possessed of real estate, was asked to join in a conveyance by way of mortgage in order to bar her dower in her husband's land, and it was not explained to the husband that, by his wife joining, her estate would be liable in any way. In fact the husband and wife were made joint grantors, and jointly covenanted for payment. After the death of the husband proceedings were instituted against his widow to compel payment. The Court [BOYD, C.] under the circumstances declared the instrument invalid as against the separate estate of the widow and dismissed the bill with costs.

CHAMBERS.

Osler, J.]

[Oct. 5.]

GLASS v. GLASS.

*Ejectment — Dower — Counterclaim — Decree form of.*

In an action of ejectment the defendant may set up a counterclaim for dower out of the lands in question.

Form of decree for such a case provided.

*Holman*, for plaintiff.

*Van Norman*, Q. C., contra.

Osler, J.]

[Oct. 5.]

MERCHANTS BANK v. CAMPBELL.

*Execution against lands—Sale—Sheriff's fee—Poundage.*

A sheriff has no right to poundage upon an execution against lands unless there has been an actual sale.

Osler, J.]

[Oct. 14.]

ROBERTSON v. CAULTON.

*Arrest—Capias — Action — Amendment, affidavits, entitling of—Writ, form and amendment of.*

Defendant was arrested under a writ of *capias* issued after action and before judgment and put in bail to the sheriff. He applied to have his arrest set aside on the grounds :

1. That the affidavit on which the order for arrest was obtained did not sufficiently state the cause of action.

2. That the affidavit was not properly entitled.

3. That the affidavit did not show sufficient cause for believing that he was about to leave the country with intent to defraud his creditors.

4. That the form of the writ of *capias* issued (*ca. re.* before action) was not the proper form of writ to be issued under the said order.

1. *Held*, that the writ of summons having been specially endorsed with the claim sufficiently described, the plaintiff should have leave to file an affidavit *nunc pro tunc* proving his cause of action.

2. *Held*, that the affidavit on which the order to arrest was obtained might be amended by adding the style of cause and division to which the action was assigned.

3. *Held*, that the fact of defendant's intention to leave the country, without a fraudulent intent being shown, was enough to justify his arrest, the debt not being denied.

4. *Held*, that the writ of *capias* and copy might be amended so as to make it the form of a writ of *capias* after action.