

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

SIR A. A. DORION, C. J., MONK, RAMSAY, TESSIER,
and CROSS, J. J.

QUEBEC, June, 1879.

MILLS and WEARE.

Procedure—Appeal—Motion to send back portion of record to Court below while Appeal is pending.

The action was instituted with *saisie-arrêt* before judgment. The defendant moved to reject the *saisie-arrêt*, and was successful in the Court of Review. The plaintiff appealed, and now moves to send back certain portions of the record to the Court below, in order that he may proceed on the principal action, pending the appeal, and he offers to substitute copies for the papers so sent back.

The majority of the Court were of opinion that the order should not be given, on the ground of the difficulty of establishing a uniform rule on the subject.

TESSIER, J., (*dis.*) thought it was discretionary with the Court to grant such an order, and that where no inconvenience was likely to arise, the order should go.

CROSS, J., while disposed to grant the application, would not, however, dissent on the question, which was a question of opportunity and procedure.

Motion rejected.

LEBEL and PACAUD.

Saisie-Conservatoire—Contesting affidavit by exception à la forme.

Motion for leave to appeal.

The action began by *saisie-conservatoire*. Defendant met the affidavit by *exception à la forme*, which was dismissed as not being the mode indicated by the Code for attacking the affidavit. The party moving cited *Leslie & Molsons Bank*, 12 L. C. R., p. 265.

The Court, without expressing any opinion as to whether the Code had altered the law since the decision referred to, refused leave to appeal, on the ground that the party moving had a more expeditious mode of proceeding than by *exception à la forme*, and that therefore

nothing but delay would result from granting the appeal.

Leave to appeal refused.

BOURKE and LANGLOIS.

Writ of Possession—Adjudicataire.

Held, that the *adjudicataire* may have a writ of possession after the year and day from the adjudication.

H*** and T*****.

Physician—Publication of patient's malady in action for services.

Held, that a medical practitioner is liable in damages for maliciously publishing, in an action against his patient for fees for his services, the nature of the malady for which such services were rendered. And malice will be presumed from the publication.

RHEAUME and PANNETON.

Lease—Alteration by subsequent contract—Effect of omitting clause prohibiting sub-letting.

Held, where a lease is so modified as to materially alter the contract, as by changing the rent into an undertaking to make improvements to a considerable amount, the clause in the original lease, that the lessee shall not sub-let, if not repeated in the subsequent contract, will be presumed to be abandoned, although there be no express stipulation in the latter contract that the original lease is cancelled.

CIRCUIT COURT, SHEFFORD.

WATERLOO, Sept. 28, 1877.

DUNKIN, J.

DARBY v. BOMBARDIER.

Saisie-gagerie in ejectment—Delay on summons—Non-judicial day insufficient.

The writ in ejectment was served on Saturday and returnable on Monday. Defendant, by *exception à la forme*, pleaded that the delay was insufficient. Articles 75, 890 and 24 of the Code of Civil Procedure were cited.