

Ct. of Ap.]

NOTES OF CASES.

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SOCIETY.

COURT OF APPEAL.

September 17.

WILSON V. BROWN.

Promissory note by firm of solicitors—Amendment.

The plaintiff lent money to H., who procured B., one of the defendants, who were known to the plaintiff as a firm of solicitors, to sign the firm name to the note jointly with him without the knowledge or consent of his partner. The defendants had done business with a Bank, agreeing therewith to recognize each others's right to sign mercantile paper, but the plaintiff was unaware of this when he took the note. It was proved that the defendants had a contract for the construction of a government work.

Held, that the plaintiff could not recover against the defendants; but that there was no reason, save the technical objection to the constitution of the record, against his recovering against B., who had signed the note, and that the record should have been amended by striking out W.'s name from the record.

A verdict had been entered for defendants in the County Court, and a rule *nisi* to set the same aside was refused.

Held, that there was no power in this Court to make the above amendment; but the appeal was allowed so far as to direct the granting of a rule *nisi*, upon a return of which the amendment might be made in the Court below.

GIBSON V. MCBRIDE.

Conflicting evidence—New trial refused—Appeal.

Where there was conflicting evidence, and the Court below had discharged a rule for a new trial, granted on affidavits, and on the ground that the verdict was against law, evidence, and the weight of evidence.

Held, that this Court could not interfere.

GAUGHAN V. SHARPE.

Prayer for general relief—Effect of—Relief not specially prayed for.

If the allegations in a bill state a case entitling a party to relief, he may under the general prayer have it, though he may have prayed specially for other relief; but a plaintiff cannot take advantage of the ambiguity of his own pleading so as to claim upon facts stated in the bill a relief entirely foreign to the scope of the bill.

A creditor's bill prayed that the proceeds of an insurance policy which had been effected by the deceased for his first wife and children, should be subjected in the hands of the executors to the payment of the plaintiff's claim, and that the executors might be restrained from paying over the money. The Court below overruled a demurrer thereto, but under the general relief prayer granted administration.

Held, reversing the decision of the Court below, that the demurrer should have been allowed, and that the plaintiff was not entitled to the administration decree.

PROCTOR V. AMBLER.

Statute of Frauds—Goods over £10—Delivery of—Verdict against evidence.

A delivery and acceptance of goods exceeding the value of £10 in order to satisfy the Statute of Frauds must be in pursuance of a contract of sale. Where, therefore, the plaintiff, an outgoing tenant of premises leased from the defendant, handed the key to the defendant,

Held, that this was not a delivery or symbolic delivery of the goods upon the premises to satisfy the statute.

Where the Court was satisfied on the evidence that the verdict for defendant was wrong, and that it was not merely against the weight of evidence, but against the evidence, the appeal was allowed and a new suit directed.