

Prac. Cases.]

NOTES OF CANADIAN CASES.

[Prac. Cases.]

execution satisfied out of the goods which were seized by the sheriff.

Order of the MASTER varied. For the first three issues set out above one is substituted, viz., the Merchants' Bank, plaintiffs, against the Imperial Bank, the Standard Bank, and Clarkson, defendants.

Aylesworth, for the sheriff and for Walsh.

Rae, for the Merchants' Bank.

Rose, Q.C., for Clarkson.

Shepley, for the Imperial Bank.

A. H. Marsh, for the Standard Bank.

Wilson, C. J.]

[Oct. 16.

WHITE SEWING MACHINE CO. v. BELFRY.

Taxation — Duty of taxing officer — Division Court costs — Jurisdiction of Division Court.

An action for the price of two distinct parcels of goods sold and delivered. The defendants accepted a bill of exchange for each parcel, one bill being for \$103.80, and the other for \$106.40. At the time the action was brought the second bill had not matured, as was alleged by the defendants, and afterwards admitted by the plaintiffs. Upon the application of the plaintiffs the Master made an order, under Rule 322 O.J.A., for final judgment against the defendants for the first parcel of goods sold and delivered, *i.e.* for \$103.80, with interest and costs of suit, including the costs of the application, "to be taxed according to the course and practice of the Court."

Under this order the Taxing Officer allowed the plaintiffs County Court costs on that part of his claim upon which they obtained the order for judgment, and he allowed to the defendant the full costs of the High Court of Justice on that part of the plaintiff's claim upon which the defendant succeeded, *i.e.* upon the claim for \$106.40, the price of the second parcel of goods.

Upon an application by the defendants to revise the taxation of the officer:—

Held, that it was the duty of the Taxing Officer to look at the pleadings, and if necessary to receive affidavits so as to ascertain the facts of the case.

Held, that Division Court costs only should have been taxed to the plaintiffs, as the amount for which they obtained judgment was ascertained by the signature of the defendants, and

was therefore within the competence of the Division Court.

Held, that the defendants should have Superior Court costs down to and including the statement of defence, which would not have been required but for the plaintiff claiming improperly the price of the second parcel of goods, which was not due, and also their costs of this application, with a set off *pro tanto* against the plaintiff's judgment and costs.

Aylesworth, for the plaintiff.

Shepley, for the defendants.

Ferguson, J.]

[Oct. 19, 1883.

CARNEGIE V. FEDERAL BANK.

Examining witness before trial — Rule 285 O.J.A.

An action for an account of the dealings of the Federal Bank with certain shares of Ontario Bank stock pledged to the Federal Bank by the plaintiff.

Upon the application of the plaintiff the MASTER IN CHAMBERS made an order for the examination before the trial of Charles Holland, the Manager of the Ontario Bank, under Rule 285 O. J. A. Mr. Holland was not a party to the suit, nor was the bank of which he was an officer, nor was it shown that there was any reason for his examination, such as his being seriously ill, or his being about to leave the jurisdiction, but it was admitted that the object was to obtain discovery from a witness before the trial.

Upon appeal to FERGUSON, J.:—

Held, that Rule 285 O. J. A., does not contain authority to make an order for the examination before the trial of a person not a party to the action where no greater necessity for making it appears than the convenience of the party who applies for the order in presenting his case for the trial. *Fisken v. Chamberlain*, 9 P. R. 283, distinguished.

Cattanach, for the appeal.

J. R. Roaf, contra.

Appeal allowed with costs.