NOTES OF CANADIAN CASES.

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COMMON PLEAS.

Divisional Court.] [September 5.

McLEAN v. SHIELDS ET AL.

Foreign judgment—Non-resident—Absence of notice of personal application to set aside judgment—Effect of.

To an action on a foreign judgment recovered in the Court of Queen's Bench, Manitoba, against S. and L., the defendant S. set up as a defence that he was not at, or during the time the proceedings were being taken to recover the judgment, nor has he since been a resident of, or domiciled within the said Province of Manitoba, and he was not served with any process or notice of the said action, nor had he any notice whatsoever of any proceedings in said action, nor had he any opportunity of appearing in the said action and defending the same; and the said judgment was obtained in his absence and without his knowledge.

Held, following *Schisby* v. *Westenholz*, L. R. 6 Q. B. 155, a good defence to the action.

S., on hearing of the judgment having been obtained against him, instructed counsel to move the Court in Manitoba to have it set aside; but the application was refused on the ground that it was too late.

Held, that this did not preclude him from contesting his liability in the action herein.

Watson, for the plaintiff.

Tilt, Q.C., for the defendant.

Wilson, C.J.] [September 22.

FOX v. SYMINGTON.

Interpleader—48 Vict. ch. 14 sec. 6, sub-sec. 3—Protection of bailiff.

The 48 Vict. ch. 14 sec. 6, sub-sec. 3, provides that the judge of the Division Court in interpleader proceedings shall adjudicate between the parties, or either of them, and the officers or bailiff, in respect of any damage or claim of or to damage arising or capable of arising out of the execution of the process by such officer or bailiff, and make such order in respect thereof, etc., as to him shall seem meet.

Held, this is for the protection of the officer or bailiff only.

CARSON v. VEITCH.

Assessment Act—Right to deduct taxes—Demand of taxes—Assessment, sufficiency of—Failure to distrain for taxes—Right to collect.

By sec. 21 of the Assessment Act, R. S. O. ch. 180, "Any occupant may deduct from his rent any taxes paid by him if the same could also have been recovered from the owner or previous occupant," unless there was an agreement to the contrary. By sec. 12 the assessment roll must contain, amongst other things, "Column 8, number of concession, name of street, or other designation of the local division in which the real property lies; column 9, number of lot, house, etc., in such division; column 10, number of acres or other measure shewing the extent of the property." In this case the name of the street and the measure of the property was given, but not the number of the lot, etc., except an arbitrary number adopted by the assessment department for their convenience; and it appeared that a person would be unable by looking at the roll, without making enquiries, to discover the property. Prior to the defendant's entry, B. was assessed as owner and had received for the three prior years a notice of assessment or assessment slip similar in form to the assessment herein. The only demand here was the leaving of the assessment slip. In an action for an illegal distress for rent, the plaintiff claimed that no rent was due by reason of his having paid the taxes,

Held, that sec. 21 does not authorize the occupant to voluntarily pay the taxes; but that he can only deduct same when they can be recovered from him and also from the owner; and as under *Chamberlain* v. *Turner*, 31 C. P. 460, which was followed and adopted, there was no legal demand (as required by sec. 92) upon which a distress could have been founded, there was no legal claim to pay the taxes and therefore to deduct them from the rent.