

[Chan.]

NOTES OF CASES.

[Chan. Ch.]

The proposed amendments to the bill were set out substantially in the order for the injunction, which was served on the defendant.

Held, that as the defendant had thereby notice of the proposed amendments, it could not be objected to the motion that the amended bill had not been served.

It appeared that there was a substantial question to be tried, and that no irreparable injury could result by preserving the subject matter of the suit *in medio*, the injunction restraining the defendant from dealing with it was continued to the hearing.

J. H. Macdonald, for plaintiff.

A. Hoskin, Q.C., for defendant.

DUMBLE V. COBOURG AND PETERBOROUGH RAILWAY COMPANY.

Review—Fresh evidence.

In applications to open up proceedings by way of review on the ground of newly discovered evidence, it is necessary for the party applying to establish (1) that the evidence is such that if it had been brought forward at the proper time it would probably have changed the result; (2), that at the time he might have so used it, neither he nor his agents had knowledge of it; and (3) that it could not with reasonable diligence have been discovered in time to have been so used.

Where, therefore, a railway company in the construction of their road took possession of and built their road across a plot of land of the plaintiff, who instituted proceedings to compel payment therefor, and under the decree a sum of \$1,800 was found to be the value of such plot, which sum, together with interest and costs, was paid by the company in order to prevent the land being purchased by a rival company, and three years afterwards they applied on petition to have a portion of such purchase money refunded, on the ground that another railway company, whose rights had been assigned to them, had previously paid a prior owner of the land for a portion thereof.

The Court [FERGUSON, J.] refused the relief asked with costs, as the company, had they exercised due diligence in the matter, might have become aware of such prior purchase and payment.

H. Cameron Q. C., and Moss, Q.C., for defendants.

Watson, for plaintiff.

CHANCERY CHAMBERS.

Boyd C.]

[Sept. 5.]

RE LAWS—LAWS V. LAWS.

Appeal—Notice of—O. J. A. sec. 38.

The notice of appeal required by R. S. O., cap. 38, sec. 26 (sec. 38 O. J. A.) was duly served upon the respondents' solicitors, and they always supposed the judgment to be subject to appeal. But by an oversight of the clerk of the appellant's solicitor, notice of appeal was not given in time to the Registrar of the Court appealed from.

BOYD C., *held* that this was a proper case to exercise the discretion given by the statute, and allowed the notice to be filed within four days on payment of costs of this application.

F. B. Robertson, for appellants.

Delamere, for respondents.

Mr. Stephens.]

[Sept. 5.]

RE SOLICITORS.

Taxation—Solicitor and client—Form of order—Rule 443.

H. Cassels applied, on behalf of the client, for an order to tax a solicitor's bill of costs, more than a month having elapsed since the delivery of the bill.

Application granted.

Order to issue in the long form in use before the O. J. A., as the Master is mentioned in R. 443, but the taxing officer is the proper officer to tax bills of costs under the act, R. 438.

Ferguson, V. C.]

[Sept.]

KING V. DUNCAN.

Money paid into Court pending appeal.

Where money is paid into Court for a specific purpose, the party paying it in is entitled to withdraw it when that purpose has been answered in his favour. The bill was filed for an injunction to restrain the defendant from receiving the proceeds of a judgment and execution against his co-defendants, alleged to be fraudulent, the money was directed to be paid into Court "to abide the further order of the Court." The injunction was refused and