

STREET, J.]

[August 20.]

IN RE MCPHERSON v. MCPHEE.

Prohibition—Division Court—Judge reserving judgment without naming hour—R.S.O., c. 51, s. 144—Prejudice—Waiver.

The judge who tried a plaint in a Division Court reserved judgment and indorsed on the summons "judgment in a week." Upon the day indicated by the indorsement he gave judgment against the defendant; the judgment came to the knowledge of the defendant, who made an application within the proper time, upon the merits, for a new trial or to set aside the judgment, which application was refused.

Upon an application by the defendant for prohibition upon the ground that the judge did not fix any day or hour for giving judgment, as required by R.S.O., c. 51, s. 144,

Held, that there was no ground for a prohibition; for the defendant was not prejudiced by the omission, and the irregularity was waived by the application upon the merits without any reference to the objection.

In re Tipling v. Cole, ante 411; and *Re McGregor v. Norton*, 13 P.R. 223, distinguished.

Re Smart and O'Reilly, 7 P.R. 364, followed.

McCabe for the defendant.

Douglas Armour for the plaintiff.

Practice.

STREET, J.]

[June 11.]

UNGER v. BRENNAN.

Venue—Change of—Fair trial—Jury—Trial judge.

The plaintiff was a settler in the district of Muskoka, and the defendant a timber licensee. The question of fact between them was whether certain timber was the property of the plaintiff or of the defendant. The defendant applied to have venue changed from Muskoka, on the ground that the jury would be largely drawn from the settler class, and that he believed he would not have a fair trial.

Held, that this was not a ground for change of venue, and any possible injustice to the defendant would be prevented by the trial judge, who would have a discretion as to the mode of trial.

Marsh, Q.C., for the plaintiff.

Oster, Q.C., for the defendant.

STREET, J.]

[July 20.]

MASON v. VAN CAMP.

Particulars—Seduction.

Where the defendant in an action of seduction denies the seduction on oath, the plaintiff will be required to furnish particulars of the times and places at which it is charged that the alleged seduction took place.

Hollister v. Annable, 14 P.R. 11, approved.

Notwithstanding differences in the Rules, the principle upon which particulars are ordered is the same here as in England.

Shepley, Q.C., for the plaintiff.

D. Armour for the defendant.

MEREDITH, J.]

[July 21.]

MACKENZIE v. ROSS.

Judgment—Default of appearance—Money demand—Leave to proceed upon another claim.

Where the writ of summons was specially indorsed to recover a money demand, and was also endorsed with a claim to set aside a conveyance, the plaintiff was allowed, upon default of appearance, to sign judgment for the money demand, and to proceed in the ordinary way upon the other claim.

Huffman v. Doner, 12 P.R. 492; *Hay v. Johnston*, ib. 596, followed.

W. H. Blake for the plaintiff.

STREET, J.]

[Aug. 8.]

IN RE YOUNG.

Costs—R.S.O., c. 124, s. 6—Removal of assignee—County Court judge—Persona designata—Power to order costs—Rule 1170 (a).

Where a judge of a County Court, acting under R.S.O., c. 124, s. 6, orders the removal of an assignee, he exercises a statutory jurisdiction as *persona designata*, and has no power to order payment of costs.

The proceedings in such a case are not in any court; and Rule 1170 (a) does not apply to them.

Re Pacquette, 11 P.R. 463, followed.

History and construction of Rule 1170 (a).

Douglas Armour for the assignee.

A. W. Anglin for the creditors.