

The difference in the English practice pointed out.

*The Boeswing*, 10 P.D. 18, distinguished.

*Semble*, if a party does not wish his own objection to a judgment to be subject to the prosecution of his opponent's appeal, his only course is to launch an independent appeal by giving notice and security. Under ordinary circumstances the two appeals would be consolidated.

*E. F. Blake* for the plaintiff.

*James Bicknell* for the defendants.

MACMAHON, J.]

[May 9.

MACEY v. BIEBEL.

*Pleading—Demurrer—What constitutes—Striking out—Irregularity—Rules 388, 389.*

To an action for wrongfully taking out of the possession of the plaintiff goods seized by him as a bailiff under process against the goods of an absconding debtor, the defendants set up a number of defences of fact, and also alleged that the statement of claim disclosed no cause of action, since it contained no allegation that the goods seized by the plaintiff were the property of the absconding debtor, and stated that the defendants set up the same rights as if they had demurred.

*Held*, that this was a demurrer, and, as it was pleaded along with defences, without an affidavit under Rule 388 or an order under Rule 389, it should be struck out as irregular.

*Vandusen v. Malcolm*, 4 C.L.T. 211, and *Snider v. Snider*, 11 P.R. 140, referred to.

The proper procedure for the plaintiff was to move to strike out the pleading, not to set it down as a demurrer.

*L. F. Hoyd* for the plaintiff.

*Higgins* for the defendants.

OSLER, J.A.]

[May 26.

GILMOUR v. MCPHAIL.

*County Court appeal—Delay in setting down—Dismissal—Extending time—Lodging of appeal—Rule 836—R.S.O., c. 47, ss. 46, 51.*

Section 46 of the County Courts Act, R.S.O., c. 47, providing that the County Court judge shall stay the proceedings for not more than thirty days to afford an appellant time to give security to enable him to appeal, and Rule 836, providing that a County Court appeal shall be set down for the first sittings which commences after the expiration of thirty days from the decision complained of, are to some extent in conflict. When the statute was amended by allowing the judge to stay proceedings for thirty days instead of ten, the Rule should have been altered so as to require the appeal to be set down for the first sittings after the expiration of so many days from the allowance of the security. But the court can always extend the time, on application, where the appeal