

stage with any well-founded complaint against the conduct of the referee, either personal misconduct or error in receiving or rejecting evidence, or otherwise; and Rule 39 shows the intention to permit interlocutory rulings to be considered; but a Judge in Chambers has no longer any jurisdiction, and the appeal must be made to a Judge in Court.

Connie v. Canadian Pacific R. W. Co., 16 O. R. at pp. 641, 642, and cases cited at p. 657, referred to.

Quere, whether upon a reference to a local Master, *qua* Master, an appeal from an interlocutory order would lie under Rule 84b.

The action was brought to recover the principal and interest due upon a mortgage, and also upon certain other claims. The interest was alleged to be overdue, and the principal to have become due by virtue of an acceleration clause. The defendant pleaded payment of the interest. A reference was directed to a Master, and upon such reference the plaintiff proved his mortgage and it appeared therein that certain instalments of interest were overdue.

Held, that the plaintiff had made out a *prima facie* case, and could not be called in to prove the non-payment of the interest.

Aylesworth for the plaintiff.

F. E. Hodgins for the defendant.

STREET, J.]

[June 11.

WHITNEY v. STARK.

Notice of trial—Irregularity—Laches in moving against—Waiver—No power to order short notice.

The ten days prescribed by Rule 661 for giving notice of trial cannot be shortened except by consent, or when short notice of trial is imposed as a term in granting an indulgence.

The plaintiff on the 23rd of May, when the proceedings were not closed, gave notice of trial for a sittings beginning on the 10th June. The pleadings were closed on the 27th May, and notice of trial might then and up to the 31st May have been regularly given in good time for the 10th June. The defendant waited until the 5th June, and then moved to set aside the notice of trial given on the 23rd May as irregular.

Held, that the defendant had waived the irregularity by his laches.

J. F. Gregory for the plaintiff.

R. U. Macpherson for the defendant.

MR. DALTON.]

[June 11

BADGEROW v. GRAND TRUNK R. W. CO.

Discovery—Examination of officer of company—Failure to attend—Motion to strike out company's defence.

There is no power to strike out the statement of defence of an incorporated company for the default of an officer of such company to attend for examination for discovery.

J. W. McCullough for plaintiff.

Aylesworth for defendants.

Chy. Div'l Ct.]

[June 12.

MOSES v. MOSES.

Costs—Scale of—Jurisdiction of Division Court—Ascertainment of amount.

The decision of Robertson, J., 13 P.R. 12, as to the scale upon which the costs of this action should be taxed was affirmed by a Divisional Court on appeal.

Wallace Nesbitt for appeal.

Aylesworth contra.

Law Students' Department.

The following papers were set at the Law Society Examination before Easter Term, 1889:

SECOND INTERMEDIATE.

REAL PROPERTY.

1. What is the difference between right of property and right of possession?
2. What is the effect of a tenant's denial of his landlord's title in ejectment?
3. What are the different ways in which a release operates?
4. A. died intestate, leaving a widow, two children, and a child of a deceased child surviving him. How did his land descend under the statute of Victoria?
5. What is an estate upon condition? Give instances of conditions precedent and subsequent, and state their effect upon the estates to which they are annexed.
6. What are the chief points of difference between a tenancy in common and a joint tenancy?
7. A tenant enters under a lease for five years, which is not under seal, and pays rent quarterly according to the terms of the writing. What interest has he?