

[Prac.]

NOTES OF CANADIAN CASES.

[Prac.]

Boyd, C.]

[Nov. 24, 1884.

DUNSFORD V. CARLISLE.

Discovery—Privilege—Answers tending to incriminate—13 Eliz. ch. 5.

Held, that the penal provisions of 13 Eliz. ch. 5, afford no excuse for a refusal by a defendant in an action brought to set aside a fraudulent conveyance to answer questions put to him regarding the fraudulent transaction.

Shepley, for the plaintiff.

Smoke, for the defendant.

Mr. Dalton, Q.C., }
Osler, J. A. }

[Nov. 1884.

GORING V. CAMERON.

Ejectment—Counter-claim—Rules 116, 127 B, 168 O. J. A.

In an action of ejectment. In I. G., the landlady of the defendant, D. C., intervened and appeared to the writ. The defendant, D. C., did not appear until statement of claim delivered, when he appeared and joined with M. I. G. in statement of defence.

Held appearance of D. C. regular.

The defendant, D. C., counter-claimed for damages in respect of a trespass by the plaintiff upon the lands in question, whilst he, the defendant, D. C., was in possession, and for an assault, etc., whereby he was compelled to quit the premises.

Held, that the counter-claim was not joining another cause of action with an action for the recovery of land within the meaning of rule 116.

Held, also, that the counter-claim should not be disallowed or excluded under rules 127 (B), or 168, on the ground of inconvenience, it not appearing that there would be any inconvenience and

Semble, that the counter-claim was sufficiently connected with the cause of action to make it advisable that they should be tried together.

Mr. Hodgins, Q.C.]

[Nov. 1884.

RE REES URQUHART V. TORONTO GENERAL TRUSTS COMPANY.

Master's office—Security for costs—Creditors.

Parties residing out of the jurisdiction, who come into the Master's office in an adminis-

tration action and claim to be creditors of an estate administered there, will be required to give security for costs.

G. M. Jarvis for the plaintiff.

H. D. Gamble for the claimant.

Rose, J.]

[Dec. 2, 1884:

LIVINGSTONE V. TROUT.

Demurrer—Allowance—Costs—Rule 195 (a) O. J. A.

The plaintiff having demurred to a paragraph of the defence, the defendant did not within ten days after delivery enter the demurrer and give notice, nor did he serve an order for leave to amend, and the plaintiff was therefore by Rule 195 (a) O. J. A. entitled to the same benefit as if the demurrer had been allowed on argument.

The plaintiff moved *ex parte* for judgment upon his demurrer.

ROSE, J. (after consultation with OSLER, J. A.) *held* that the proper practice in such a case is to apply to a Judge in Court, upon notice to the opposite party, for an order to strike out the pleading or part of the pleading demurred to, and for a direction as to payment of costs; but on the return of the motion the party in default will have no right to be heard as to the validity of the pleading.

Clement, for the plaintiff.

Boyd, C.]

[Dec. 15, 1884.

KELLY V. IMPERIAL LOAN CO. ET AL.

Costs—Payment of pending appeal.

The defendants being entitled by the judgment of the Court of Appeal to the costs of the action, obtained out of Court for suit the bond given by the plaintiff for security for the costs of the action.

Before action on the bond, and pending an appeal by the plaintiff from the judgment of the Court of Appeal to the Supreme Court of Canada, one of the sureties on the bond obtained leave and paid into Court to the credit of this action \$400, the amount due on the bond, to abide further order. Upon the application of the defendants, the chancellor directed the \$400 to be paid out to their solicitors upon the solicitors undertaking to refund the amount