

witness, and no question was then raised as to his assenting, or non-assenting, and the judge reported that there really was no question about it, the court would not entertain the objection.

### COMMON LAW CHAMBERS.

(Reported by Mr. FRANK PEPLER, Student-at-Law.)

#### LEVY V. WILSON.

*Setting aside Judgment—Affidavit wrongly entitled.*

[Mr. DALTON, 8th Jan., 1873.]

Judgment on default of appearance set aside for irregularity, on the ground that affidavit of service of writ entitled in the County Court instead of in the Queen's Bench.

#### ANSELL V. SMITH.

*Venue—One party living out of the jurisdiction.*

[Mr. DALTON, 14th Jan., 1873.]

In moving to change the venue the fact that one party lives out of the jurisdiction does not affect the equities between the parties.

#### BANK OF COMMERCE V. WHITE.

34 *Vict.*, c. 12, s. 12, O.—*Eight days notice to town agent.*

[Mr. DALTON, 15th Jan., 1873.]

*Held*, that a notice to plead, within eight days, served on a Toronto agent, may be set aside as not being in compliance with 34 *Vict.*, c. 12, s. 12, O.

#### RE CREDIT VALLEY RAILWAY & COUNTY OF PEEL BONUS.

36 *Vict.*, c. 36, sec. 14—*Ex parte Application for Enquiry—Particulars.*

[GALT, J., after consultation with other Judges, 18th Jan., 1873.]

*Held*, 1. An application under the above section must be by summons, and if an order be obtained in the first instance, it will be set aside.

2. The enquiry must be confined to the particulars finally given by applicant.

#### FLEMING V. LIVINGSTONE.

*Jurisdiction—Prohibition—County Court—Set off.*

[GWYNNE, J., 24th Jan., 1873.]

*Held*, 1. On applications for prohibition, &c., the judge's notes at the trial should be accompanied by his report of the case.

2. Plaintiff in a County Court suit gives credit on a claim of \$300 (for board, &c.) for \$170, being the value of an article received by him from defendant. Then although the agreement as to setting off the one against the other is made before the debt for which the action is

brought is contracted, yet if (a) the amount to be allowed to defendant for the article can be treated as a payment of a portion of plaintiff's claim and not merely an unliquidated set off against it; or (b) the transaction can be viewed as a sale, first, of the article, upon an agreement that payment of it was to be made in board, &c., to be furnished by plaintiff to defendant—the court has jurisdiction.

#### NICHOLSON V. COULSON.

29-30 *Vict.*, c. 42, sec. 1—*Staying proceedings till Costs of day in same suit paid—In Forma Pauperis—Abuse of Process.*

[Mr. DALTON, 30th Jan., 1873.]

*Held*, 1. That 29-30 *Vict.*, c. 42, s. 1 does not refer to costs of day in same suit, and consequently proceedings cannot be stayed in a suit in which costs of day have not been paid.

2. That, nevertheless, this can be done on the ground of abuse of the process of the Court where the proceedings are vexatious.

### CHANCERY CHAMBERS.

(Reported by THOS. LANGTON, Esq., Barrister-at-Law.)

#### RE TOBIN-COOK V. TOBIN.

*Representation to deceased party—Gen. Order, 56.*

[BLAKE V.C. on appeal from REFEREE, 10th Feb., 1873.]

An order had been made for the administration of the estate of an intestate, accounts had been taken under it, and the Master had made his report, but before it was filed or confirmed the administratrix died. No one could be found who was willing to administer to the estate, which was insolvent.

The Court therefore under Order 56, made an order appointing as administrator *ad litem* the person who had been guardian of the infant heirs of the intestate, on the application for the administration order, he having also been Solicitor for the administratrix in her lifetime.

#### FRASER V. HOME INS. CO.

*Production of documents.*

[The REFEREE, 28th Feb., 1873.]

The Court will not act merely upon an allegation by a party seeking to protect documents from production, that they are not material, if it appear from their nature or otherwise that they may afford material assistance to the party seeking production in establishing his case.

When a party having a joint interest in documents with a stranger to the suit, has the sole legal possession thereof, production will not be ordered unless the suit be of such a nature that