

CHAPMAN V. SMITH.

Practice—Order dismissing action after once taken to trial—O. J. Act, Rule 255.

Issue was joined in an action, on the 16th December, 1881, and the case tried on the 22nd, when a nonsuit was entered, which by consent was set aside. The record was again entered for the March Assizes of 1881, and remained over until the following Assizes, when by consent it was struck out, without costs to either party. These proceedings were before the O. J. Act. After this Act came in force the plaintiff's solicitors, though they stated that the plaintiff did not intend to go on with the action, refused to consent to its dismissal, and an order was obtained from the Master in Chambers dismissing it with costs. On appeal to CAMERON, J., the Master's order was set aside. The defendants then appealed to the Divisional Court.

Held, that, under the O. J. Act, Rule 255, the Master's order was properly made, that the words in that rule, "for the next sittings of the Court," were not confined to the first sittings which took place after the close of the pleadings, and that the fact, therefore, of the plaintiff having taken the case once to trial did not prevent the defendant from moving for a dismissal of the action, in case the plaintiff neglected to take the case down again for trial on a future occasion.

Holman, for the plaintiff.
Watson, for the defendant.

KELSEY V. ROGERS.

Contract to make staves—Property in.

The plaintiff, residing in Detroit, on 22nd December, 1880, entered into an agreement with one M., headed "A Mem." of a joint account agreement between the parties, whereby M. agreed to furnish to the joint account, loaded in cars at stations on G. T. and G. W. Rys., 12,000 to 15,000 staves at \$180 per M., describing the kinds with the prices, to be loaded in cars and ready for shipment not later than June 1st, 1881, to be a joint account transaction, share and share alike in gain or loss, and to be consigned to a Quebec house, which would pay freight and commission. The plaintiff to furnish a competent man to cull the staves, and to make reasonable advances from time to time as the progress of the work should warrant, the expenses of the culler and interest on money advanced to be

charged to the joint account. The staves to be considered, whether marked or not, the property of the plaintiff as security for advances.

Held, that under this agreement the staves were the property of the plaintiff as soon as made, and not the property of M.; and that the Bills of Sale Act did not apply.

Meredith, for the plaintiff.

Gibbons, for the defendant.

CORPORATION OF ANCASTER V. DURAND ET AL.
Tolls—Demise of—Right to make—Bylaw—Toll gate outside township limits.

Action on a bond made by D. and two others, sureties for the payment of the purchase money arising under a lease to D. of a toll gate, and of the right to collect the tolls thereat.

Held, under the circumstances of this case, that the fact of the toll gate being placed on the Barton side of the road, Barton and Ancaster being adjoining townships, was no objection to the demise; that there was the right to demise; and that although there should have been either a general or special by-law for such purposes, the defendant could not raise the objection for the first time in his notice of motion to set aside a verdict entered for the plaintiff.

Osler, Q.C., for the plaintiffs.

MacKelcan, Q.C., for the defendants.

GALLAGHER V. GLASS.

Assignment for creditors—Trust to carry on business—Validity.

An assignment in trust for creditors of a small stock of goods, valued at about \$230, and a lot of land, made to a person not a creditor, and without consulting the creditors, contained a provision empowering the assignee to carry on the business and wind it up, no time being stated therefor, to pay all salaries, wages, etc., and all advances made in goods and money for conducting said business in the winding up thereof, and in his discretion to call a meeting of creditors, or otherwise to take their advice in the winding up; also to sell the lands as to him should seem best. On an interpleader issue between an execution creditor and the assignee:

Held, (WILSON, C.J., dissenting), that the deed could not be supported.

Bartram, (of London), for the plaintiff.

Gibbon, (of London), for the defendant.