

C.P.]

NOTES OF CASES.

[C. L. Ch.]

The statute also provided that all taxes levied for any year should be considered to be imposed and to be due from the 1st January thereof, and end on 31st December, unless otherwise expressly provided by by-law. The tax collector, about the 20th May, left with the plaintiff, whose taxes were over \$5.00, a tax bill in accordance with the above by-law, stating that the taxes were due on 4th June, but such payment could be made by instalments, &c. : and that non-punctuality wholly forfeited such right, but rendered the party's goods liable to distress on neglect to pay fourteen days after demand. After the 4th June, without any further demand, the tax collector issued his warrant to the bailiff, who distrained the plaintiff's goods on the 12th, and sold them on the 18th June.

Held, that the taxes were not due until the 4th June, and that no demand could be made until that date, and therefore the levying of the taxes before that date, even if otherwise a demand, could not be deemed to be such: and quære, whether the mere leaving of such a tax bill, even after the 4th June, could be deemed to be a demand.

Held also, that the insertion in the by-law of the discretionary power to the collector to distrain at any time was improper.

The plaintiff was therefore held entitled to recover the value of his goods sold.

McCarthy, Q. C., and *A. M. Macdonald*, for the plaintiff.

J. E. Rose and *McWilliams*, for the defendant.

COMMON LAW CHAMBERS

IN RE MURPHY V. CORNISH.

Osler J.]

[Jan. 15.]

Appeal to sessions by defendant—Prohibition.

Held, that the prosecutor of a complaint cannot appeal from the order of a Magistrate dismissing the complaint.

By R. S. O., ch. 74, sec. 4, the practice as to appeals is assimilated to that under 33 Vict., ch. 27, which confines the right of appeal to the defendant.

Aylesworth, for the defendant.

W. R. Mulock, for other parties.

IN RE MEAD V. CREAMY.

Cameron J.]

[Jan. 21.]

Division Court—Garnishee—Attachment—Prohibition—Jurisdiction.

The garnishees held \$500 belonging to the defendant. The plaintiff claimed the right to attach this money in a Division Court, to the extent of his judgment, amounting to \$72.25.

Held, that the jurisdiction of Division Courts in garnishee proceedings is limited to debts within the proper competence of such courts to try, and a prohibition was therefore ordered.

Held, that under 43 Vict., ch. 8, secs. 10 and 14, notice of intention to dispute the jurisdiction of a Division Court is only necessary when the cause of action, being within Division Court jurisdiction, is brought in the wrong court.

Aylesworth, for plaintiff.

Roaf, for garnishees.

Mr. Dalton.]

[Feb. 4.]

GHEENT V. MCCOLL.

Judgment debtor—Attachment—Costs.

Held, that a judgment creditor, whose judgment is for costs, cannot examine his judgment debtor under R. S. O., ch. 50, sec. 304, nor garnish debts due to him, this section requiring the judgment to be for a substantial cause of action.

A judgment creditor in such a case may examine his judgment debtor under R. S. O., ch. 49, sec. 17.

Caswell, for judgment creditor.

Henderson (Ferguson, Bain, Gordon & Shepley), for judgment debtor.

Leonard (Jones Bros. & McKenzie), for garnishee.

Mr. Dalton.]

[Feb. 8.]

MORGAN V. AULT.

Pleading—County Court—Abatement.

The defendant pleaded to an action in Superior Court that there was a suit pending in a County Court, brought by the plaintiff's against the defendant for the same cause of action.

Held, that the plea should aver that the cause of action in the first suit was within the jurisdiction of the County Court.

Hellmuth, for plaintiff.

Aylesworth, for defendant.