

Q. B. Div.]

NOTES OF CASES.

[C. P. Div.]

The defendant subsequently refused to deliver the remainder of the twelve cars except at an increased price, the rates for freight having advanced.

Held, that the contract was subject to the plaintiff inspecting before shipment, and that the shipment of the one car was not a waiver of the condition for inspection at Landsdowne of the balance, and that defendant was not, therefore, bound to deliver.

CAMERON J., dissented.

Bethune, Q.C., for plaintiff.

W. H. P. Clement, for defendant.

VETTER V. COWAN.

Writ of Capias—Ont. J. Act.

It is not necessary that an action should have been already commenced by writ of summons, before the issue of a writ of capias, which is not affected by the Judicature Act.

Shepley, for defendant.

Aylesworth, for plaintiff.

COMMON PLEAS DIVISION.

RE WIDMEYER V. McMAHON.

Division Courts—Jurisdiction—Married woman—Separate estate—Title to land.

The plaintiff sued upon a promissory note for \$176.44, payable with interest at 10 per cent., the principal and interest amounting together to \$185.65.

Held, following *McCracken v. Creswick*, 8 Prac. R. 501, that under the Division Court Act 1880, the amount of fixed legal damages in the nature of interest for non-payment of a promissory note need not be under the signature of the defendant, and the above claim would therefore be recoverable in a Division Court.

In an action against a married woman the obligation on the part of the plaintiff to prove that she is possessed of separate estate does not, when it is shewn that she is possessed of such estate, necessarily bring the title thereto in question, so as to oust the jurisdiction of the Division Court. At all events the possession of separate personal estate is sufficient to enable

a permanent judgment to be given; and although the absence of proof of any personal estate may be urged as a ground of defence, it does not oust the Court of jurisdiction.

Aylesworth, for the plaintiff.

Holman, for the defendant.

THE EXCHANGE BANK V. STINSON.

Chose in action—Action by assignee—Set-off.
—R. S. O. ch. 116, secs. 7, 10—*Judicature Act*, secs. 12, 16, *Rule 127*.

Held, that to an action by an assignee of an account for the price of timber and staves delivered by the assignor to the defendant, under two certain contracts therefor, the defendant, under the Act relating to assignments of choses in action, R. S. O., ch. 116, secs. 7, 10, and the Judicature Act, secs. 12, 16, and Rule 127, can set up a claim for damages for the non delivery by the said assignor to the defendant of certain other timber and staves specified in the contracts.

In this case, the learned Judge at the trial having refused to entertain such defence, a new trial was ordered.

Falconbridge, for the plaintiff.

McCarthy, Q. C., for the defendant.

JONES V. DUNBAR.

Principal and surety—Notice—Evidence.

Held, that when sureties for a debt give to the creditor a second mortgage on land as additional security, on foreclosure proceedings being taken by the first mortgagee, the creditor, on being notified thereof, must either make himself a party to the suit and prove his claim, or give notice to the sureties of such proceedings, to enable them, if they so desire, to prove at their own expense; but *held*, that the evidence set out in the case showed that the sureties had notice, and even if they had not notice before the foreclosure decree was made, they had such notice some three months before the day of payment, that such decree had been made.

The evidence showed that one of the alleged sureties, H., originally occupied the position of a principal debtor. *Held*, that the fact of his changing his position as between his co-debtor and himself could not affect the creditor.

The other surety, D., admitted his liability as