

[Prac.]

NOTES OF CANADIAN CASES.

[Prac.]

Boyd, C.]

[February 14.]

COMSTOCK V. HARRIS.

Discovery—Examination of party resident out of jurisdiction—Appointment and subpoena—Conduct money—Convenience—Production of books—Staying action.

When a party to an action who lives in a foreign country comes within the jurisdiction, service upon him of an appointment and subpoena, as in the case of resident litigants, is sufficient to compel his attendance; and it lies upon the party so served to object at the time to the payment made for conduct money.

It is not reasonable that books in constant use in business should be brought into the jurisdiction from a foreign country for the purposes of an examination, unless the examiner in the course of the examination rules that they are necessary.

Upon failure of the plaintiff to attend for examination, pursuant to subpoena and appointment served upon him, the action should not be stayed till he does attend; it is sufficient to impose a stay for a definite time.

Langton, for the plaintiff.

Holman, for the defendant.

Mr. Dalton, Q. C.]

[February 15.]

DOMINION S & I. CO. V. KILROY.

Interpleader—Order to produce—Locality—Motion for irregularity, grounds of.

After delivery of an interpleader issue a party may take out on *præcipe* an order for production of documents by the opposite party.

Such order should issue, and the record should be passed in the principal office of the court in Toronto, as no locality is pointed out by the proceedings in interpleader. A notice of motion to set aside a proceeding for irregularity should show, or refer to affidavits showing, what the irregularity is; and where a notice was deficient in this respect, the motion was dismissed, but without costs, as the objection advanced on the return of the motion was well taken.

J. R. Roaf, for the plaintiffs.

Aylesworth, for the defendant.

Boyd, C.]

[February 16.]

ADAMSON V. ADAMSON.

Writ of assistance—R.S.O. c. 66, s. 11.

The application of R.S.O. c. 66 is not limited to purely common law actions pending in those courts before the Judicature Act, but extends to all writs of execution; and a writ of assistance, in execution of a decree of the Court of Chancery for the recovery of land, is a writ of execution within the meaning of s. 11 of that Act, and does not remain in force after one year from the teste, if unexecuted, unless renewed.

MacLennan, Q.C., for the plaintiff.

Bain, Q.C., for the Sheriff of Peel.

Chan. Div.]

[February 21.]

RE RAINY LAKE LUMBER CO.

Appeal—Divisional Court—Winding-up proceedings—45 Vict. ch. 23 s. 78.

Pending proceedings under an order for the winding-up of a company under 45 Vict. ch. 23, (D.), the Union Bank filed a petition praying that the liquidator might be ordered to deliver up certain lumber claimed by the bank. The petition came on to be heard before a judge in court, and was adjourned by him for the sake of convenience before the judge holding the Port Arthur Assizes, who heard the evidence orally and pronounced judgment thereon.

Held, that the proceeding at Port Arthur was not the trial of an action, and therefore, and also having regard to the provisions of 45 Vict. ch. 23 s. 78, that no appeal lay to the Divisional Court.

George Bell, for the Union Bank.

J. R. Roaf, for the liquidator.

C. P. Div.]

[February 21.]

HUNTINGTON V. ATTRILL.

Action on foreign judgment—Staying proceedings—Appeal in foreign country.

An action on a foreign judgment was stayed, pending an appeal in the foreign state from the judgment sued on, although no stay of execution upon the original judgment was imposed