

Full Bench.]

MACPHERSON v. CALDER.

[June 16,

County Court—Action against administratrix—Plea of Plene Administravit—Replication.

*Held*, that in an action against an administratrix in the County Court issue is not joined upon the plea pleaded, when the plea is one of plene administravit, and that in such a case before the defendant can have judgment quasi non-suit there must be a demand of replication, notwithstanding s-s. 4 of s. 40 of the County Court Act, 60 Vict., cap. 28, that "no similitur or joinder shall be necessary, but the cause shall be at issue upon the plea pleaded."

*Van Wart*, Q.C., for plaintiff. *Phinney*, Q.C., for defendant.

Full Bench.]

HATHEWAY v. KINSMAN.

[June 16.

Actions against non-residents, 60 Vict., c. 24, s. 48, judgment for cost without damages.

Three separate actions were brought against R. W. K., R. W. K. Co., (Ltd.) and R. A. B. on a promissory note to which they were parties. All three writs were specially endorsed for service out of the jurisdiction, R. A. B. after the service of the writs and before the entry of the cause against the present defendant, paid the note and costs of the suit against him, and the plaintiff subsequently signed a judgment for costs in the action against the present defendant. On a motion to set aside the judgment defendant relied on the concluding clause of s. 48 of the Supreme Court Act, 60 Vict., cap 24: "Provided always that the plaintiff shall be required to prove the amount of the debt or damages claimed by him in such action either before a jury on a writ of inquiry or before a judge according to the nature of the case, as the court or judge may direct, and the making of such proof shall be a condition precedent to his obtaining judgment."

*Held*, that plaintiff was entitled to judgment for costs.

*Puddington*, in support of the motion.

Full Bench.]

PRICE v. WRIGHT.

[June 16.

*Tort—Bite by Dog—Damages—Remoteness—Scienter.*

*Held*, in an action for damages for the injury of a girl child by the biting and scratching of a dog that a direction by the learned judge that in assessing damages the jury might consider the effect of the disfigurement on the girl's prospects of marriage was erroneous, the damages being too remote.

*Held*, also that a direction that the jury might take into consideration the defendant's financial standing and prospects in life was erroneous.

*Held*, also that one instance of the dog having previously bitten and