

Prac.]

NOTES OF CANADIAN CASES—CORRESPONDENCE.

Mr. Dalton, Q.C.]

[October 18.]

BROMLEY V. GRAHAM.

Production—Privilege—Affidavit of documents—Criminal libel.

Held, that to obtain privilege for a document, in an affidavit on production, the grounds upon which it is claimed must be stated.

Held, also, that a statement in the affidavit that according to the plaintiff's contention the document contained a libel and therefore exposed the defendant to a criminal charge, and did not protect the document; the defendant should have gone further and expressed his belief that the production of the document would expose him to a criminal charge.

Webb v. East, 5 Ex. D. 108, followed.

Holman, for the plaintiff.

Douglas Armour, for the defendant.

Wilson, C. J.]

[October 26.]

HALL V. PILZ ET AL.

Mechanic's lien—Costs, scale of.

The action was brought to enforce a mechanic's lien for \$142. At the time of the commencement of the action there was registered against the property affected by the plaintiff's lien another mechanic's lien for \$130.

Held, that as the aggregate amount of the two liens was over \$200 the action was properly brought in the High Court of Justice, and the costs should be on the scale of that court, and it made no difference that the second lienholder failed to substantiate his claim.

W. H. P. Clement, for the plaintiff.

F. Colquhoun, for the defendants Conrad.

Ferguson, J.]

[October 25.]

PICKUP V. KINCAID ET AL.

*Jury notice—Issue—Account—Discretion—**R. S. O. ch. 50, sec. 255.*

Where the action was upon a physician's bill for medical attendance, no equitable issue was raised, and it clearly appeared from the pleadings and examination of parties that the only matter really in dispute was the amount of the bill, a judge in chambers exercised the discretion given him by R. S. O. ch. 50, sec. 255, and struck out the defendants' jury notice.

Hayles, for the plaintiff.

George Macdonald, for defendants.

Ferguson, J.]

[October 25.]

FOSTER V. MOORE.

Lis pendens—Vacating registration.

In an action by a creditor of M. to set aside a conveyance to M.'s wife as fraudulent, the plaintiff registered a certificate of *lis pendens* against the lands covered by the conveyance.

Held, that the registration was proper, and that pending the action no order could be made to vacate it.

Bain, Q.C., for the plaintiff.

E. D. Armour, for defendant.

CORRESPONDENCE.

PLEADING A JOINDER OF ISSUE.

Editor of the LAW JOURNAL:

SIR,—Under the above heading an article appears in the last number of the *Canadian Law Times*, commenting upon the decision in *Harc v. Cawthrope*, 11 P. R. 353; and as the point decided in that case must arise almost daily in the practice of solicitors, it deserves consideration. The case in question decides that a joinder of issue may be filed by way of defence to a statement of claim or reply to a counter-claim. In order to sustain this decision, two propositions must be admitted or proved, namely: (1) That a joinder of issue is a pleading; (2) That it is equivalent to a statement of defence. The provisions of the Judicature Act are certainly not every explicit in dealing with joinders of issue; and there is a good deal to be said in favour of the negative of both the above propositions. In the definition of a "pleading" given in the Interpretation Clause (sec. 91) of the Act, no reference is made to a joinder of issue, nor is it mentioned in Rule 126, which specifically directs what pleading may be filed by the plaintiff and defendant respectively. It is strange that this rule is not referred to either in the above case or article.