T. T., 27 Vic.

Roe et al. v. McNeill et al.

Ejectment on sheriff's deed—Improper recitals in—Purchaser not estopped by.

An action of ejectment on a sheriff's deed which recited "That by a *ven. ex.* I have seized as the lands of A. M. that certain tract, &c., and whereas the said premises since the seizure by me, made by virtue of the said writ of *ven. ex.*, after due notice were exposed to public sale," &c., and then granted to the purchaser.

It appeared that the lands had been seized under a writ of *fi. fa.* previously issued, and placed in the sheriff's hands, and that the *venditioni exponas* ordered him to expose to sale and sell the lands so seized.

Held, that the misrecitals of the acts of the sheriff in the deed did not invalidate the deed itself; that the purchaser was not nor were the plaintiffs estopped by such recitals, and therefore plaintiffs might shew what the facts were; that recitals did not exclude the presumption of a proper seizure on the *fi. fa.*

That as the debtor attorned to the purchaser the defendant could not impeach the purchaser's title so long as she retained the possession of the person making the attornment.

This decision is not inconsistent with that in the same case, reported in 13 U. C. C. P. 189. (14 U. C. C. P. 424.)

M. T., 28 Vic.

Gaynor et al. v. Salt.

Practice in sending papers filed to Nisi Prius.

Papers filed in court should not be sent away to be used as evidence at *Nisi Prius*, unless when the originals are essential, and the party applying to have them transmitted has some right in them, or the interests of public justice require their transmission; and in that case the officer sending should take a voucher from the officer receiving them. (24 U. C. Q. B. 180.)

Ex., Jan. 18.

Boosey v. Wood.

Libel—Pleading—Accord and satisfaction—Acceptance of.

To an action of libel—plea, that it was agreed to accept, in satisfaction, certain mutual apologies, to be published in certain newspapers, which were published accordingly.

Held, a good plea of accord and satisfaction. (13 W. R. 317.)

Ex. C., Nov. 26.

Tipping v. St. Helen's Smelting Co.

Nuisance to land.

Every man is bound to use his own property in such manner as not to injure the property of his neighbour, unless, by lapse of time, he has acquired a prescriptive right to do so. The law does not regard trifling inconveniences, and every thing must be looked at from a reasonable point of view. In an action for a nuisance to property by noxious vapours, the injury must be such as visibly to diminish the value of the property and the comfort and enjoyment of it. In determining the question, all the circumstances must be taken into consideration; and in places where great public works develop the material wealth of the country persons must not stand upon extreme rights. (13 W. R. 289.)

Q. B., Jan. 26.

Anon v. Parr.

Practice—Interrogatories—C.L.P. Act 1854, *s.*51.

Interrogatories will not be allowed to be administered for the purpose of eliciting from the defendant whether the plaintiff has a legal cause of action, or what cause of action he has, but only in aid of a cause of action stated by him.

Quære, whether the plaintiff can apply to administer interrogatories before declaration. (13 W. R. 337.)

Ex., Jan. 26.

Mason v. Mitchell.

Married Woman—Desertion—Order for protection.

An order for protection obtained by a married woman who has been deserted by her husband, does not protect property acquired by her by immoral practices. (13 W. R 349.)

E. & A.

Westacott v. Powell.

Seduction—Loss of service—Birth of child.

In an action for the seduction of the daughter of the plaintiff, the action may be maintained before the birth of the child; but

Per curiam, (Spragge, V.C., and A. Wilson, J. dissenting) the statute (Con. Stat. U. C. cap. 77) does not dispense with evidence of a pecuniary loss or damage, such as was required before the act. (2 E. & A. Rep. 525.)

CHANCERY.

L. J., Jan. 14, 16.

Parkinson v. Hanbury.

Settled account—Mortgagee in possession—Agent—Wilful default—Sale under power.

Where a defendant sets up by his answer a settled account in which no specific errors are charged by the bill, the bill is properly dismissed.

Mortgagees, under a conveyance in trust to sell, to secure principal and interest, take possession, not as mortgagees, but as agents of the mortgagor.

In a suit for redemption, *held* (1) that the mortgagees will not be ordered to account on the footing of wilful default; (2) that a purchase by the mortgagees of the mortgaged property from a prior mortgagee, selling under a power of sale, will be set aside as a purchase by a trustee, of trust property. (13 W. R. 331.)