

Q. B.]

NOTES OF CASES.

[Ch.

Mrs. Coombe. She did not know the extent to which American patriotism can go.

NOTES OF CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

QUEEN'S BENCH.

IN BANCO—MAY 16.

CROWE V. STEEPER.

MUNICIPAL LAW.

To change the Common Law by-laws must be distinct in their language. A by-law enacted that certain animals (named) and other breachy cattle should not run at large, and fixed the height of fences. *Held*, that as the by-law did not permit the running of cattle at large, by enacting that some should not, it was held that the plaintiff was liable at Common Law for injury sustained, no matter what the height of the fences fixed by the by-law might have been.

Robinson, Q.C., and Scane for the plaintiff.

Bethune, Q.C., contra.

CHANCERY.

Blake, V. C.]

[May 13.

GILCHRIST V. WILEY.

Demurrer—Equitable garnishment.

The plaintiff, who had recovered judgment against the defendant Wiley, filed a bill alleging that Wiley, being the owner of lands subject to a mortgage, conspired with his co-defendant, whereby a second mortgage was executed by Wiley to one A., who paid the money to the co-defendant, which was held by him as agent or trustee for Wiley. The lands were subsequently sold in a suit by the first mortgagee, and realized sufficient to pay the two mortgages only. The plaintiff proved his claim in that suit in the Master's office, but received nothing. He alleged that he had been led to believe that the mortgage by Wiley to A. was *bona fide*, but had ascertained that such was not the fact; and prayed that the co-defendant might be ordered to pay over the amount paid out of the proceeds of the lands to satisfy the mortgage in favor of A.

Held, that the bill was in effect one to garnish the money due to Wiley in the hands of his co-defendant, and under the authority of *Horsley v. Cox*, L. R. 4 Ch., 92, and *St. Michael's College v. Merrick*, 1 App. R. 520; 26 Grant, 216, could not be maintained.

J. Reeve, for plaintiff.

Moss, for defendant Wilson.

Spragge, C.*]

[May 21.

SANSON V. NORTHERN RAILWAY COMPANY.

Nuisance—Injunction—Acquiescence.

The plaintiff was owner of a steam vessel plying on Lake Couchiching, and accustomed to run into the River Severn, where it leaves the lake, and to lie in a basin beside a wharf at Washago. The defendants, in extending their line of railway, constructed a bridge across the river which completely obstructed the entrance, and caused special damage to the plaintiff, who was obliged to moor his boat in a basin on the lake side of the bridge, which was somewhat too small for its intended purposes. Some correspondence took place while the bridge was being built, between the plaintiff personally and through his solicitor, and the defendants' general manager, in the nature of protests, but the bridge had been in use for several years without action on the part of the plaintiff, when the bill was filed praying that it might be declared a nuisance, and that the defendants might be ordered to abate it.

Held, that by the delay in taking action, and otherwise, there had been unequivocal acquiescence in the defendants' action, and the bill was therefore dismissed with costs.

D. McCarthy, Q.C., and Pepler, for plaintiff.

Walter Cassels and Baulton for defendants.

Spragge, C.]

[May 21.

NELLES V. WHITE AND O'NEIL.

Tax sale—Assessment, validity of—Description—Certificate of sale, effect of—Possession fraudulently obtained.

A parcel of land called Lot One in one survey and Lot Four in another was assessed variously as "1, 4," "1 and 4," "1 and part 4," "part 1 and 4," which, however, did not mislead.

* The following cases were heard by the present Chief Justice of Ontario, whilst Chancellor.