

Cham.]

NOTES OF CASES.

[Cham.]

MR. DALTON, struck out the order for payment, holding that the practice under the J. A. in these matters was governed by Rule 443, and similar to the common law practice before the passing of the J. A. He directed the order for taxation to go in the terms of the Rule to ascertain simply the amount of the bill, without going into the question of a retainer.

S. R. Clarke, the solicitor in person.

J. A. Worrell, contra.

Wilson, C. J.]

[Feb. 17.]

IN RE MCCLIVE ET AL. SOLICITORS.

Attorney and Solicitor—Costs—Interest on costs.

A solicitor may entitle himself to interest upon his bill of costs by demanding it in writing.

The taxing officer has no power to allow interest unless the matter has been specially referred to him by the order for taxation.

J. H. Macdonald, for the solicitors.

Aylesworth, contra.

Dalton, Q.C.—Proudfoot, J.]

[Feb. 22.]

NORVAL V. CANADA SOUTHERN RAILWAY.

CUNNINGHAM V. THE SAME.

Costs—Certificate of judgment of Court of Appeal—Practice.

Two decrees of the Court of Chancery were affirmed with costs by the Court of Appeal. Orders were made in Chancery Chambers (18th February, 1880) making the certificate of the judgments in appeal orders of the Court of Chancery.

The defendant then appealed to the Supreme Court, which allowed him a new trial without costs, permitting him to set up a defence then raised for the first time, but was silent as to the costs incurred in the courts below.

The plaintiff issued executions under the orders made in Chambers.

Mr. DALTON set aside the executions.

On appeal, PROUDFOOT, J., held that the orders in Chambers were regular, and until set aside

might properly be acted upon, and should have due effect given them until reversed.

Appeal allowed with costs.

H. Cassels, for the appeal.

Cattanach, contra.

Cameron, J.]

[Feb. 24.]

IN RE WILTSEY V. WARD.

Division Court—Appeal—Prohibition.

Plaintiff brought an action for \$140 in a Division Court and recovered judgment. Defendant applied for a new trial which was refused, and from this decision he appealed to the Court of Appeal. After the bond in appeal had been perfected, and while the appeal was pending, defendant applied for a prohibition to the Division Court on the ground of jurisdiction.

Held, that such an application could not be entertained until the matter was out of the Court of Appeal.

Aylesworth for the plaintiff.

McDonald for defendant.

Mr. Dalton, Q.C.]

[Feb. 25.]

LIGHTBOUND V. HILL.

Pleading—Amendment—Judgment, opening up.

Plaintiff signed judgment against defendant in default of a plea and issued execution. At the time the suit was brought defendant was insolvent, and plaintiff alleged no fraud in his declaration.

Held, that the plaintiff should not be allowed, after the lapse of two years, to open up the judgment and amend the declaration by alleging fraud.

Holman, for plaintiff.

Aylesworth, for defendant.