

Prac. Case.]

BINGHAM V. HENRY—NOTES OF CANADIAN CASES.

[Sup. Ct.

ally be referred to a special committee of Messrs. MacKelcan, Crickmore, Bethune, J. F. Smith, MacLennan, and H. Cameron. Carried.

It was moved by Mr. Crickmore, seconded by Mr. Meredith, and ordered, that a book be procured in which shall be entered all rules of Convocation as the same shall be passed or altered, and those which have already been passed since consolidation, and that it be referred to the Committee on Journals of Convocation and Printing, to carry into effect this resolution.

Convocation adjourned.

REPORTS

ONTARIO.

(Reported for the LAW JOURNAL.)

PRACTICE.

BINGHAM V. HENRY.

Practice—Evidence on commission—Professional expert.

[June 7—Mr. DALTON, Q.C.]

In this action, which was brought by certain persons, who were grain dealers and commission merchants, to recover a balance alleged to be due them by the defendant on certain transactions connected with the purchase of corn by the plaintiffs for the defendant in New York, the plaintiffs obtained an order for a commission on interrogatories to New York, to examine, amongst others, one Erastus Cooke, and delivered the interrogatories to be administered to the defendant in accordance with the practice.

The interrogatories were as follows:—

1. By what law are the rights of principal and agent governed in transactions such as those set out in said copy of proceeding, where such transactions are entered into in the City or State of New York?
2. According to said law what are the rights and liabilities and duties of the principal in such transactions where the circumstances are similar to those set out in what is called the statement of claim herein?
3. According to said law what are the rights, liabilities and duties of the agent in such transactions where the circumstances are similar to those set out in said statement of claim?

On June 6, 1883, *Lefroy* moved to strike out the above interrogatories on the ground, among others, that they were evidently addressed to a professional witness, and it was not proper that the evidence of professional men, or experts of any kind, should be taken on commission. Such witnesses should be produced at the trial. He referred to *Russell v. Great Western Ry. Co.* 3 U. C. L. J. 116.

H. J. Scott, contra.

Mr. DALTON, Q.C.—The questions objected to refer to the law of New York State applicable to the contract between the parties. The objections are rather to the issue of a commission for the purpose of such evidence. The question would seem to require almost a treatise on the law of the State on the subject. It is urged that cross-examination will be necessary. It would be better that the evidence should be taken in open court. It is impracticable to frame cross-interrogatories to such general questions. To save expense and time I refer this motion to the learned judge in Chambers. See L. R. 1 P. D. 107; 20 Ch. D. 760.

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

SUPREME COURT OF CANADA.

COTTON CO. V. CANADA SHIPPING CO.

Sale by agent—Undisclosed principal—Tender and plea of payment.

Action by respondents to recover the price of a cargo of 810 tons of coal sold by I. M. & Co., their agents, through W., a broker. They bought and sold notes, stated that the coal, 810 tons, was sold to arrive at \$3.75 per ton of 2240 lbs., "buyers to have privilege of taking bill of lading or re-weighing at sellers' expense." I. M. & Co. were known to be general agents of the respondents. The appellants elected to have the coal as per bill of lading without having it weighed, but three weeks later, on weighing it in their own yard, without notice to the vendors, they found the cargo to contain only 755 tons 580 lbs. The appellants pleaded that their contract was with I. M. & Co., and that the respondents had no action; and by a second plea they alleged that they had offered part of the amount claimed to I. M. & Co.