

on the part of plaintiff, and that both parties must be taken to have relied upon his remedy in damages.

Held, also, that as defendant had counter-claimed damages, and could be fully compensated in that way, and admitted that the sum of \$15 would cover the defects alleged, plaintiff was entitled to have judgment entered in his favour for the amount of his claim, subject to that reduction, and to have his appeal allowed with costs.

H. Mellish, for appellant. *D. C. Fraser*, for respondent.

Full Court]

ALEXANDER v. BAKER.

[Jan. 11.

Setting cause down for trial before Judge at Chambers—Order must prevail until set aside—Application to set aside judgment.

At the instance of plaintiff and after due notice to defendant's solicitor, who was present when the application was made and made no objection thereto, the cause was set down for trial before a Judge at Chambers.

Held, that the order, being clearly within the jurisdiction of the Judge who made it, must prevail until set aside, and was not affected by the subsequent giving of a jury notice by defendant.

Defendant's counsel appeared at the trial and while objecting that the trial could not be proceeded with on account of the giving of the jury notice, went on with the trial and cross-examined plaintiff's witnesses, and called witnesses on behalf of defendant.

Held, that having taken his chances on the trial he had no merits upon which he could ask to have the judgment against him set aside.

Held, that the judgment of the Chambers Judge must be affirmed and defendant's appeal dismissed with costs.

Sugg v. Selber, 1 Q.B.D. 362, distinguished.

D. McNeil, Q.C., for appellant. *C. S. Harrington*, Q.C., for respondent.

Province of New Brunswick.

SUPREME COURT.

Full Court.]

COLE v. McDONALD.

[Feb. 4.

Constable appearing in Justices' Courts—Presentment of note—Sec. 4 of Justices' Court Act directory.

A constable appeared for the plaintiff on the return of a summons in a Justices' Civil Court and applied for an adjournment, which was granted, on account of the absence of the plaintiff, who was a necessary and material witness in his own behalf.

Held, (1.) that a judgment signed at the adjourned court for the plaintiff was bad, and that a non-suit should be entered (2.) That s. 4 of the Justice's Civil Court Act providing that the Justice "shall read over to each witness