Gore Bank v. *Gore Mutual Insurance Company.*—Rule *nisi* to rescind order of Connor, J.

In re West Middlesex Agricultural Society and East Middlesex Agricultural Society.—Rule absolute for mandamus.

Adshead v. *Upton.*—*Held*, 1, that a rule for costs may be issued either in term or vacation; 2, that it may be issued in the vacation of the assize next preceding term (Hagarty, J., *dubitante*); 3, that it is premature to issue it during the sitting of the court of assize for which notice of trial was given. Rule absolute to rescind rule for costs of the day with costs.

Best v. *Boice.*—Rule for new trial; costs to abide the event.

Hum et ux v. *Lasher.*—Rule absolute for new trial; costs to abide the event.

The Queen v. *McLean.*—New trial ordered.

Wells v. *McGarth.*—Rule absolute for new trial without costs.

Dickson v *Haskin.*—Rule discharged.

June 20, 1863.

Wismer v. *Wismer.*—Judgment for defendant on demurrer.

Sykes et al v. *The Ottawa and Prescott Railway Company.*—Held, that until payment made a garnishee is not in a position to plead a plea in bar to an action at the instance of his creditors. Judgment for plaintiffs on demurrer.

Bank of Upper Canada v. *Kuttan.*—Held, that no stranger to a bill or owner can at law sustain an action on it. Rule absolute to disallow amendment and for new trial without costs.

Garner v. *Garner.*—Rule absolute to enter nonsuit.

Grey v. *McMillan et al.*—Judgment for defendants.

COMMON PLEAS.

Present: DRAPER, C. J.; RICHARDS, J.; MORRISON, J.

June 15, 1863.

Shaw v. *Moreton.*—Rule absolute to enter nonsuit.

Baskerville v. *Doane.*—Rule discharged.

In the matter of Smith and Henderson, two, &c.—Rule discharged, without costs.

Thompson v. *Kaye.*—Judgment for defendant, on demurrer.

Steuart v. *Clark.*—Rule for new trial, without costs.

Quackenbush v. *Snider.*—Judgment for plaintiff, on demurrer. Rule absolute for new trial; costs to abide the event.

Turley v. *Evans*—Judgment for plaintiff on demurrer, and rule discharged, except as to so much of it as asks for reduction of verdict, which part is made absolute.

Williams v. *Taylor.*—Rule discharged.

Meredith v. *McCutcheon*—Judgment for plaintiff, on demurrer.

Powell v. *Baker.*—Judgment for plaintiff, on demurrer.

Fraser v. *Robertson.*—Judgment for plaintiff on special case.

Smith v. *Dodd.*—Rule discharged.

Roe et al v. *O'Neill et al*—Rule absolute to enter nonsuit, unless plaintiff pay costs in a month, in which case new trial ordered.

Cotton v. *Beaty.*—Rule discharged.

Neilson v. *Jarvis.*—*Held*, that a writ of *fieri facias* cannot be wice renewed, and that the second writ is a nullity. Rule absolute for new trial, without costs.

Watson v. *Perrine et al.*—Rule discharged.

Lawson v. *Ingram.*—Rule absolute for new trial, on payment of costs.

Kennedy v. *Mulligan.*—Rule *nisi.*

Murray v. *Dickenson.*—No rule.

June 20, 1863.

Bank of Upper Canada v. *The Grand Trunk Railway Co.*—Judgment for plaintiffs. (Draper, C. J., dissentiente.)

Campbell v. *Corporation of Elma.*—Judgment for plaintiff on demurrer, with leave to amend on payment of costs.

Carrall v. *McInnes.*—Appeal dismissed without costs.

Benedict v. *McInnes*—Appeal allowed. New trial without costs.

The Queen v. *The Port Whitby Railway Co.*—Rule discharged with costs.

The Queen v. *Lunn.*—Conviction affirmed.

In re Cahill and Clark.—Rule absolute to set aside so much of order of Connor, J., as gives costs of reference to plaintiff.

White v. *Lord et al*—Application in the part of unattaching creditor to set aside judgment and execution obtained by plaintiff against defendants as being collusive. Rule absolute to set aside execution with costs to be paid by plaintiff.

In the matter of Goodwin and the Ottawa and Prescott Railway Company.—Rule absolute but not with costs, as no power to give costs except in cases under the Municipal Institutions Act.

Thompson v. *Kaye.*—Rule refused.

PRACTICE COURT.

Present: RICHARDS, J.

June 20, 1863.

Johnston v. *Jamieson*—*Held*, that the court has no jurisdiction to set aside an award for a mistake in law, unless the mistake appear on the face of the award or in some writing given contemporaneously with it Rule discharged with costs.

Moodie v. *Dougall*—*Held*, that a matter once discussed and decided, cannot be again discussed upon the suggestion that the judge who decided took an erroneous view of the law. Rule discharged without costs.

Glass v. *Whitney.*—*Held*, that plaintiff cannot, after demurrer to a plea in bar decided against him, be allowed to discontinue. *Semble*, his proper course is, at the time of the delivery of judgment against him on the demurrer to apply for leave to amend. Rule discharged with costs.

SELECTIONS.

THE ACTION FOR A NUISANCE.

What is an actionable nuisance? That has become a very difficult question to answer since the decisions of the courts in some recent cases, where the alleged nuisance has been the burning of bricks near the premises of the complainant. In these cases the judicial opinions appear to be most conflicting, and consequently the law on this subject, which is one of frequent occurrence, and therefore of some importance, is in a very doubtful and unsettled state. It is certainly rather remarkable to find it an undecided point at the present day whether, if a man carry on a lawful trade, or exercise acts of ownership on his land, such as burning and making bricks there, he is or is not legally liable to an action for a nuisance at suit of a neighbour whose property has been thereby injured. But so it is. The first case which gave rise to this question, and has since led to so much discussion on the subject, is that of *Hole* v. *Barlow*, 4 C. B. N. S. 334. There the action was for a nuisance alleged to have been caused by the defendant burning bricks on his own land near to plaintiff's house, and Byles, J., who tried the cause, directed the jury that the verdict ought to be for the defendant if he carried on the burning of bricks in a proper and convenient place for that purpose, although the plaintiff's enjoyment of his property might have been rendered uncomfortable by the nuisance. That direction was upheld by the Court of Common Pleas, consisting of Crowder, J., Willes, J., and Byles, J., the Court being of opinion that such direction was warranted by the following passage in Com. Dig. tit. "Action on the Case for a Nuisance:" "So an action does not lie for a reasonable use of any right, though it be to the annoyance of another, as if a butcher, brewer, &c., use his trade in a convenient place, though it be to the annoyance of his neighbour." In *Bamford* v. *Turnley*,