

Cham.]

NOTES OF CASES.

[Cham.]

sions and Unorganized Tracts, and a prohibition was ordered to restrain a stipendiary magistrate from [adjudicating upon a claim on a promissory note for \$110.

Delamere, for the motion.

Holman, contra.

Proudfoot, J.]

[Oct 3.]

McLAREN V. CALDWELL.

Costs paid into Court and payment out.

Where money was paid into Court by the defendant as security for costs on certain appeals in the suit, and as security for costs on an appeal from the decree and all the appeals were allowed.

An application to have the moneys so paid in, paid out to the defendant notwithstanding an appeal to the Supreme Court was granted following *Billington v. Provincial*, to be reported.

Barwick, for the motion.

Creelman, contra.

Proudfoot, J.]

[Oct. 3.]

RE CAMERON.

Money in Court—Payment out—Rule 424.

An order was made some years ago by the Referee for the payment out of court to certain infants as they came of age of their shares which had been duly ascertained.

One infant came of age a short time since, but the clerk in the accountant's office refused to issue a cheque without a judge's order under Rule 424.

PROUDFOOT, J., held that under Rule 494 and sub-sec. 2, sec. 11, O. J. A., the order already made by the Referee was sufficient.

Evans, for the applicant.

Mr. Dalton, Q.C.]

[Oct. 10.]

CRUSO V. BOND.

Mortgage—Foreclosure—Principal—Election.

Plaintiff, a mortgagee, filed a bill for foreclosure of the mortgaged premises, and for immediate payment and possession. Defendant tendered the amount due for principal, interest and costs, but plaintiff refused to take the principal and discharge the mortgage.

Held, that by filing his bill he had made his election to accept the debt, and that he should execute a re-conveyance upon receipt of principal, interest and costs.

Mr. Dalton.]

[Oct.]

LAWLESS V. RADFORD.

Security for costs.

Replevin for a steam-engine and hay-press The County Court Judge made an order that the sheriff should hold the articles subject to the order of plaintiff. The defendant now applied for an order under sec. 9 of R. S. O., cap. 53 to vary this, by directing possession to be given to him. The defendant also applied for security of costs, the plaintiff living out of jurisdiction, and the writ issued since the 21st Aug., did not shew residence of plaintiff. It appeared by an affidavit of the sheriff that he had not received the bond provided by sec. 11.

H. Symons, for motion.

A. Cassels, contra, objects as to motion for security, that the affidavit of plaintiff upon which the writ was obtained, shewed that plaintiff resided out of jurisdiction, and that the order could be obtained upon *proceipe* under R. 431, the *affidavit* being the proceeding by which the action is instituted. The seizure also is regular, as it is not absolutely necessary that a bond should be given.

MR. DALTON.—The defendant should have security for costs, and his motion is regular, the writ is the proceeding by which the suit was instituted, and not *the affidavit* and as the writ does not shew plaintiff's residence the defendant is justified in coming here. The seizure I must set aside altogether. It was an improper thing for the sheriff to seize until he had received the bond. Sec. 11 says expressly that a sheriff is not to seize until the bond is furnished, and no Judge's order can waive this. I will make an order to set aside the seizure, and directing the sheriff to re-deliver the goods to *defendant*, and will reserve question of costs of the application until the sheriff is before me. I do not know now whether we or the plaintiff should pay them.

Order to go for security for costs in usual form.