

Mathers, J.]

SCHATSKY v. BATEMAN.

[Feb. 6.]

Practice—Replevin—Præcipe order for.

The plaintiff's action was for replevin of a team of horses.

Under Rule 862 of the King's Bench Act, he took out an order on præcipe for the replevin of the team. This order was made out in Form No. 112 referred to in Rule 865 and embodied a direction to the sheriff not only to seize the team, but to hand them over to the plaintiff, contrary to the express provision of Rule 869.

The sheriff carried out the order and turned over the team to the plaintiff.

Held, that the defendants were entitled, under Rule 864, to have the replevin order set aside with costs, the horses to be delivered back to the defendants, the sheriff to be protected from any action and to have his costs paid by defendants and added to their costs.

Levinson, for plaintiff. *Burbidge*, for defendants. *A. B. Hudson*, for the sheriff.

Bench and Bar.

APPOINTMENTS.

Walter Gibson Pringle Cassels, of the City of Toronto, Province of Ontario, one of His Majesty's Counsel, learned in the law, to be the judge of the Exchequer Court of Canada, in the room and stead of the late Mr. Justice Burbidge, deceased.

(March 2.)

The ignoble but embarrassing subject of tips to waiters has been ennobled by a solemn judgment in the English Court of Appeal. The effect of the decision is that tips received by a waiter ought to be taken into consideration as part of his weekly earnings, and it came up in a case as to assessing compensation under the Workmen's Compensation Act. The Court of Appeal, however, made it clear that their decision would not extend to tips which would involve or encourage any breach of duty on the part of the recipient to his employer, or which were casual or sporadic or trivial in amount.