Da Costa v. The Gordon Estate.

Notice to admit documents at trial—New Practice.

[Sept. 22, 1856.]

In this case a summons had been obtained calling on the defendants to admit documents under the 165th section, following the old practice.

Burns now moved that the summons be made absolute.

For the defendants it was urged that the summons should be set aside with costs. Rules 29 and 30 prescribed the mode and form in which parties should be called on to admit. It should be by notice to the party called on, or his attorney, and in case of refusal, the Judge at *Nisi Prius*, and not the Judge in Chambers, was the proper person to decide on the matter of costs; and the object of the Common Law Procedure Act was to do away with summonses to admit, and orders upon them.

Burns, J., ordered the summons to be discharged with costs, on the ground that the new practice, as contended for the defendant, is the proper construction of the Common Law Procedure Act.

Moffatt v. Fitzgibbon.

Taxation of Costs on entering Judgment in the Superior Courts, on a confession in a case marked "inferior jurisdiction."

[Sept. 24, 1856.]

This was an application to procure the decision of the Judge on a point relative to the taxation of costs. On now entering judgment on a confession obtained in April last, the officer of the Queen's Bench was of opinion that he had no power to grant any costs. The 155th rule under the Common Law Procedure Act provided, that in cases of the proper competence of the County Court in which final judgment shall be obtained without a trial, and in which the papers shall *not* be marked "inferior jurisdiction," no more than County Court costs shall be taxed without special order of the Court or a Judge. In this case the papers were marked "inferior jurisdiction," and the officers thought he had no power to grant any costs. According to the old practice the party entering judgment would be entitled to County Court costs.

Burns, J., decided that in such cases County Court costs should be taxed.

Horsman v. Horsman.

Interrogatories for the discovery of the nature of the defendant's title, under 176th Sec. allowed upon summons to show cause.

[Sept. 27, 29, 1856.]

In this case, which was an action of ejectment,

M. Vankoughnet moved absolute a summons obtained under the 176th section to file interrogatories to the defendant. The plaintiff's affidavit was exactly in the form given in *Chitty's Archbold*. A similar application had been made to Mr. Justice Hagarty, under the Evidence Act, before the Common Law Procedure Act came into force, who had some difficulty in deciding it, and referred the applicant to the full Court; but meanwhile the Common Law Procedure Act came into operation, which left no doubt on the subject. The object of the interrogatories was to obtain a discovery of the nature of the defendant's title, and were copied almost word for word from those which were allowed in the case of *Flitcroft v. Fletcher*, 33 L. & Eq. 505, 25 L. J. Ex. 24.

Carrall showed cause: The word "discovery" in the 176th section only included such documents as would have been the object of a bill of discovery in equity, under which the general practice was not to compel a defendant to disclose his title.—*Martin v. Henning*, 10 Exch. 478, Storey Eq. Jur., section 14917. [Burns, J.—That is all altered now by the Law of Evidence Act, which allows a party to be examined orally as to all matters touching his own case.] The mode under the Common Law Procedure Act, by which defendant was compelled to disclose the nature of his title, was by a statement filed along with plea, pleaded under the 224th section.

Vankoughnet.—Plea was filed in this case before the Act came into force. Finlason's note to sec. 51 of the English C. L. P. Act, states that the plaintiff is entitled under it to the discovery of the nature of defendant's title, but not of the evidence by which he intends to support his title.

Burns, J., granted leave as required to file the following interrogatories:—

First—In what character or on what right do you claim to be entitled to the possession of the premises for which this action is brought?

Second—Do you claim to be entitled to the same under the will of the late John Horsman of Nissouri?

Third—Have you any right or interest in the said premises except as aforesaid,—and if so, what is the nature of such right or interest?

Duggan v. Bright.

Upon a summons for reference under the 143rd section an order granted under 84th.

[Sept. 27, 1856.]

In this case *Paterson* had obtained a summons for a reference to the Master of the Queen's Bench under the 143rd section. The action was for a bill of costs in Chancery, and judgment had been allowed to go by default.

McMichael, for the defendant, would prefer a reference to an arbitrator under section 84, who understood the subject of costs in Chancery better than might be expected of the Master of the Queen's Bench.

Burns, J., granted an order under the 84th section.

Moore v. Cotton.

Affidavit unnecessary on an application for a summons to plead double.

[Sept. 26, 1856.]

In this case *J. B. Reid* obtained a summons to plead double without filing any affidavit.

Gill v. M'Auley.

Absent defendant—Practice.

[Sept. 27, 1856.]

The writ having been issued before the Common Law Procedure Act came into force, and served on the defendant, a resident in Ogdensburgh, U. S., service was allowed under the Absent Defendant's Appearance Act, 14 and 15 Vic. cap. 10. Plaintiff now moved for an order to proceed as the Judge might think fit, under the 35th and 36th secs. of C. L. P. Act.

Burns, J., granted an order to proceed by sticking up the proceedings in the Crown Office, and serving the defendant through the post.

McCallum v. McCallum.

The 251st section is applicable to judgments entered after the C. L. P. Act came into force, even where proceedings commenced and verdict had under the old practice.

[Sept. 29, 1856.]

This was a motion upon a summons to set aside a judgment in ejectment, entered in the name of a dead defendant.

Burns showed cause.—Although the previous proceedings had been taken under the old practice, judgment had been entered since the Common Law Procedure Act came into force. The death of the defendant in the present case had taken place after verdict, and by the 251st section in such case, the plaintiff was entitled to judgment, without suggestion