

C. L. Cham.]

NOTES OF CASES—McCLINTOCK'S APPEAL.

[U. S. Rep.]

CANADA REPORTS.

ONTARIO.

NOTES OF RECENT DECISIONS.

COMMON LAW CHAMBERS.

(Reported by Mr. H. J. SCOTT, B.A., Student-at-Law.)

CARNEGIE V. TUER.

Insolvent Acts of 1864-1869—Application of.

[March 31, 1874—MR. DALTON.]

In this case a summons was taken out to set aside a *fi. fa.* on the ground that the defendant had made an assignment, and obtained his discharge, under the Insolvent Act subsequent to the debt. An affidavit was put in that the defendant was an innkeeper, and it was therefore contended that he could not take advantage of the Act, as not being a trader. The assignment was made in March, 1869, under the Act of 1864. The Act of 1869 was passed on the 22nd of June of that year, and the discharge was not obtained until November, 1870, and was entitled "Insolvent Act 1869."

Held, that the proceedings being commenced under the Act of 1864, they must all be considered as taken under that Act, the procedure merely being regulated by the Act of 1869, and as the former Act was not confined to traders, the summons was made absolute.

DICKENSON V. HARVEY.

Suggestion on roll of death of Sheriff—Who entitled to execution.

[April 20, 1874—MR. DALTON.]

This suit was on notes seized under a *fi. fa.* and after judgment recovered the Sheriff died.

Held, upon an application to enter a suggestion of his death upon the roll, that his executors, and not the Sheriff who succeeded him in office, were entitled to execution.

SPEERS V. GREAT WESTERN RAILWAY CO.

Postponing trial—Accident—Damages.

[May 2, 1874—MR. DALTON.]

This was an application to put off trial. The plaintiff was injured by an accident on the defendant's railway, and affidavits were put in to the effect that sufficient time had not elapsed from the date of the accident to tell properly

whether the injury would be permanent, and thus enable the jury to assess damages.

Held, that this was a sufficient reason for putting off the trial, and an order was accordingly made upon payment into Court, as upon a plea of payment into Court, of \$1,000.

TAYLOR V. GRAND TRUNK RAILWAY CO.

Leave to amend—Stay of proceedings.

[May 16, 1874—MR. DALTON.]

In this case an order was made granting leave to plead and demur, with liberty to plaintiff to amend within a certain time, but without any express stay of proceedings. Before the expiration of the time for amendment the defendants filed and served pleas and demurrer.

Held, that giving a certain time to amend pleadings operates as a stay of proceedings, as to pleadings, until the expiration of that time, and the pleas and demurrer were set aside as irregular.

UNITED STATES REPORTS.

SUPERIOR COURT OF PENNSYLVANIA.

McCLINTOCK'S APPEAL.

Sale of growing timber.

1. In agreements for the reservation or sale of growing timber, whether the timber is to be regarded as personal property, or an interest in real estate, depends on the nature of the contract, and the intent of the parties.
2. If the agreement does not contemplate the immediate severance of the timber it is a contract for the sale or reservation of an interest in land, and until actual severance, the timber in such case passes to the heir, and not to the personal representative.
3. When the agreement is made with a view to the immediate severance of the timber from the soil, it is regarded as personal property, and passes to the executor and administrator, and not to the heir.

Certiorari to the Orphans' Court of Lycoming county.

Opinion by WILLIAMS, J. Delivered October 23d, 1872.

The Orphans' Court was clearly right in deciding that the pine and hemlock timber reserved by the decedent in his deed to the administrator, was personal property, and in charging him with its value. In agreements for the reservation, or sale of growing timber, whether the timber is to be regarded as personal property, or an interest in real estate, depends on the nature of the contract, and the intent of the parties. If the agreement does not contemplate the im-