

C. L. Cham.]

NOTES OF CASES.—JONES V. BRASSEY AND BALLARD.

[Eng. Rep.]

above measures we note that every person who carries on business under some name or designation other than his own, must register a declaration to that effect within six months after the passing of the Act.—That provision is made for the institution of suits against the Crown by petition of right and respecting procedure in Crown suits, &c.—An Act for the Prevention of Corrupt Practices at Municipal Elections.—That Committees of the Legislative Assembly may examine witnesses on oath.—That in the County of York the office of Clerk of the Peace and Crown Attorney may be held by different persons &c. There are no less than three Acts affecting Registrars, which, however, are not of immediate interest to the practising lawyer. We should have supposed it would have been more convenient, and a "better job" to have inserted all these provisions in one Act.

We shall probably have occasion to allude further to some of the Acts of this Session at a future time.

CANADA REPORTS.

ONTARIO.

COMMON LAW CHAMBERS.

JORDAN V. AMBLER.

Arbitration—Reference back—Costs.

[Prac. Court, Mich. Term, 1871.]

GALT, J.—When a rule is asked for to refer a case back to an arbitrator to allow him to certify to prevent defendant deducting costs, the arbitrator evidently intending that each party should pay his own costs, the rule will be made absolute without costs. The costs of taking the award again before the arbitrator to be borne by the applicant.

BAIN V. MCKAY.

Particulars of Fraud.

[Chambers, Oct. 27, 1871.]

MR. DALTON.—Particulars will be ordered of the fraud charged in a plea to a declaration alleging the breach of an agreement.

WILLIAM McLEAN, *Primary Creditor*, MURDOCH McLEOD, *Primary Debtor*, AND DANIEL McLEOD, *Garnishee*.

Division Courts—Garnishee proceedings—Discretion of Judge—Jurisdiction.

[Chambers, November 18, 1871.]

A garni-see in a Division Court suit not appearing on summons judgment was given against him. After a lapse of more than fourteen days he applied for leave to set aside this judgment and come in to defend. Meritorious grounds for relief being shown, the judge made an order as asked.

HAGARTY, C. J., C.P.—The judge had jurisdiction to make such an order, although the fourteen days within which new trials should be asked for had elapsed.

A judge of a Division Court has in garnishment proceedings large discretion to prevent injustice, nor is he to be tied down to rigid rules as to procedure and forms in cases where the subject matter of the suit and the suit itself is within his jurisdiction.

CAMERON V. MILLOY.

C. L. P. Act, sec. 227—Twenty days' notice of trial.

[Chambers, Dec. 22, 1871.]

MR. DALTON.—The provision as to twenty days' notice by the defendant to the plaintiff to bring on a case for trial does not apply when the case has once been tried.

BAIN V. MCKAY.

Pleading—Declaration in trover.

[Chambers, Dec. 27, 1871.]

MR. DALTON.—It is incorrect in a declaration in trover to allege that the defendant converted to his own use or wrongfully deprived the plaintiff, &c. [Which is the form used in Bullen & Leake's Precedents.]

HARPER V. SMITH.

Change of venue.

[Chambers, March 12, 1872.]

MR. DALTON.—When the place where the cause of action arose and the place of residence of the defendant and of his witnesses concur, a change of venue will be ordered to such County although the plaintiff's witnesses reside where the venue is laid.

ENGLISH REPORTS.

COURT OF EXCHEQUER.

JONES V. BRASSEY AND BALLARD.

Nolle prosequi—Entry of as to part of plaintiff's claim—Judgment by nil dicit as to residue—Second action for balance of claim—Plea of "judgment recovered"—Effect of nolle prosequi in support of such plea—No bar to second action.

In an action to recover £133 8s. 10d. balance due for work and labour, &c., in which the particulars of the plaintiff's claim consisted of a series of items about ninety in number, the defendants pleading first (except as to £65 7s. 3d. parcel, &c.) never indebted; secondly (except as to the said parcel), payment; and they said nothing in bar of the plaintiff's claim to the £65 7s. 3d. The plaintiff thereupon entered a *nolle prosequi* in respect of so much of his claim as the defendant's pleas were pleaded to, viz., £68 1s. 7d., and signed judgment by *nil dicit* for £65 7s. 3d., and costs of suit, which the defendants paid. Thereupon the plaintiff immediately brought a second action, in the same form, to recover the £68 1s. 7d., in respect of which the *nolle prosequi* was entered in the previous action, to which the defendants pleaded, first, never indebted; secondly, payment before action; and thirdly, a special plea setting up the judgment recovered for £65 7s. 3d. in the previous action, in bar of and as an answer to the second action.

The particulars of claim in the second action were identically the same as those in the first action, with the addition of a credit item for "£65 7s. 3d., amount of judgment recovered," leaving a balance of £63 1s. 7d., for which the second action was brought.