

the fundamental principles of the common law, and were ready to go the farthest in discarding its salutary and time-honored rules. Of all the systems and schemes devised by the wisdom of man for administering justice, there is none, take it all in all, which comes so near perfection as that of the common law, made up of two elements,—judges and jurors,—in a measure independent, and each with its proper function prescribed and understood. That, like all human institutions, it is true, is imperfect and defective, and sometimes not only fails to attain justice, but becomes an instrument of positive wrong. But these are the exceptions. The rule is in every respect in favor of reaching results as near the ends of justice as can reasonably be hoped for in the uncertainty of human testimony, and the difficulty there is in defining and limiting the rules of law. And when, in view of some verdict rendered through the passion or ignorance of a jury, we hear men declaiming against these as a part of our system for determining questions of right in courts of justice, we would only point to them the danger to which suitors would be subjected from narrow, partial, or misguided views of men with like passions, who would undertake to pass upon the rights of others under the name of judges. Especially is this the case where judges are elective. We should, by confiding to these men, without the check of a juror's oath, the rights of the citizen, be going back a great step towards the mischiefs of a Star Chamber, where the law between man and man, and especially between the individual and the public, can hardly fail to be moulded and shaped to suit the will and passions of the power that creates the judges who declare it. No tyranny is more cruel, no injustice more intolerable, than that which is accomplished under the name of administering justice through the medium of a court of law. The lessons left us in the history of the Star Chamber should not be lost upon the world; and if this effort to revive the memory of this court, by borrowing from the records of the past, shall have served to throw light upon its true character in the mind of any one, the labor would not have been in vain.—*American Law Review.*

CANADA REPORTS.

ONTARIO.

COMMON LAW CHAMBERS.

KIRKPATRICK V. HARPER.

Notice to proceed—Nullity—Irregularity—Laches—Waiver—Judgment—Writs of fi. fa., setting aside.

When in a notice to proceed one of the plaintiffs' names was omitted,

Held, (notwithstanding *Doe Read v. Paterson*, 1 Prac. R. 45), under the present state of the law, not a nullity, but merely an irregularity, and that such irregularity had been waived by the defendant's laches, he having taken no objection until over a year afterwards.

Held, also, that the writs of *fi. fa.* should be set aside, the words "executors of the last will and testament of J. K., deceased," having been unauthorisedly struck out after the issuing of the writs.

[October 4.—MR. DALTON.]

In this case the defendants having given the plaintiffs notice to proceed, and they not prosecuting the suit, the defendants entered a suggestion of the notice, signed judgment and issued execution. The plaintiffs took out a summons to set aside the suggestion and judgment, on the ground that the notice to proceed was a nullity, one of the plaintiffs' names having been omitted in the style of the cause; and to set aside the writs on the ground that an alteration in the writs had been made after their issue by striking out the words "executors of the last will and testament of J. K., deceased."

Osler, for defendant, contended that the notice to proceed was only irregular.

Holman for plaintiff cited: *Doe Read v. Paterson*, 1 Prac. R. 45, and contended that the notice to proceed was a nullity, and that the judgment must therefore be set aside.

MR. DALTON held that the notice to proceed, owing to the recent changes in the law as to amendments, was not a nullity but only an irregularity, which the defendants had waived by their laches, more than a year having elapsed between the service thereof and this application. The writs he thought, however, should be set aside. He therefore made the summons absolute to set aside the writs of execution with costs as to that part of the application, but discharged it as to setting aside the judgment for irregularity. He however set aside the suggestion and judgment on the merits on the payment of the costs of the application so far as it applied to this, and the costs of the judgment.