REPORTS.

CANADA.

CHANCERY DIVISION.

(Reported for the LAW JOURNAL.)

SNIDER v. SNIDER.

SNIDER v. ORR.

Irregularity—Statement of defence—Filing defence after cause set down for hearing in default of defence.

Where a defence was filed after the action had been set down to be heard on motion for judgment in default of defence,

Held, the defence was irregularly filed, and that it should not be allowed to remain on the files, except upon the terms of payment of all costs occasioned to the plaintiff by the defence not having been filed in due time.

[Boyd, C.—June 11, 1885.

E. D. Armour, for plaintiff, moved for judgment in default of defence in both of the above actions.

C. Y. Holman, for defendant. A statement of defence has been filed in each action since they were set down, and therefore the plaintiff cannot now obtain judgment as for default of defence. *Gill* v. *Woodfin*, 25 Ch. D. 707.

E. D. Armour, in reply. The defences are filed too late and therefore are irregular, *Clarke* v. *McEwing*, 9 P. R. 281; if allowed to stand, the defendant should be ordered to pay all costs occasioned by his default.

BOYD, C.—The defence, being filed after the time limited, is irregular. If the defendant, within ten days, pays to the plaintiff all costs occasioned by the setting down of the action to be heard on motion for judgment in default of defence, the statement of defence may be allowed to remain on the files. If these costs are not paid within the time I have named the defences must be struck out, and judgment must go in each case in accordance with the prayer of the statement of claim.

NOTES OF CANADIAN CASES.

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CHANCERY DIVISION.

Boyd, C.] [April 22.

KITCHEN v. DOLAN.

Purchase of land—Evidence of agency—Statute of Frauds.

D. agreed to purchase certain lands as agent for K., and accordingly executed an agreement for the purchase of the same in her own name.

Held, that the evidence of D.'s agency was receivable though not evidenced by writing.

Quære, whether *Bartlett* v. *Pickersgill*, 1 Cox 15, is still to be regarded as good law?

W. Cassels, Q.C., and *Matheson*, for the plaintiff.

Martin, Q.C., and *Livingstone*, for the defendant.

Full Court.] [May 21.

COOK v. EDWARDS.

Farm lease—Covenants—Right to increase the arable land.

A lease of a farm contained the covenant that the lessee "shall and will, at his own costs and charges repair and keep repaired the erections and buildings, fences and gates erected or to be erected on the premises, the said lessee finding or allowing on the said premises all rough timber for the same, or allowing the said lessee to cut and fell so many timber trees upon the premises as shall be requisite."

Held, that the above words must be read as if "hereby" was inserted before "allowing." It was intended to intimate by that clause that the lease permitted the use as occasion arose of the timber for such purposes. There was nothing in it to indicate that the landlord was to control the use of the timber so that he might limit it to the buildings, fences and erections existing at the date of the lease.