

[Prac.]

NOTES OF CANADIAN CASES.

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Cameron, C.J.] [September 2.]

MCDONELL V. THE BUILDING AND LOAN ASSOCIATION.

Costs, scale of—Illegal distress—Injunction—Damages—Subrogation—County Court, equity side of.

The plaintiff claimed to have it declared that a certain distress made upon his goods by the defendants, under a clause in their mortgage, was illegal and void, that it should be set aside, that an *interim* injunction obtained by the plaintiff to restrain the sale of the goods distrained should be made perpetual, that the plaintiff should be paid \$200 damages for the illegal distress, or in the event of the Court holding the distress legal, that the plaintiff should be declared entitled to the defendant's mortgage security to the extent of the value of the goods sold.

The judge at the trial found in favour of the plaintiff, made the injunction perpetual, and assessed the damages at \$25, with full costs against the defendants.

The Common Pleas Divisional Court reversed this judgment, and dismissed the action with costs.

Held, that the action was not one that could properly have been brought under the equity jurisdiction of the County Court before the O. J. A. and the Law Reform Act, 1868, although the arrears of rent and the damages found by the judge at the trial were less than \$200; and that the costs should therefore be taxed upon the High Court scale.

D. Armour, for plaintiff.

Alan Cassels, for defendants.

Rose, J.] [September 7.]

THOMAS V. STOREY.

Examination of plaintiff before trial—Issue of forgery or personation—Ex parte order.

No order of any moment should be made *ex parte*, except in a case of emergency.

The principal issue was as to a certain instrument upon which the defendant relied, which the plaintiff claimed was obtained either by forgery of the plaintiff's name or by personation of the plaintiff.

Held, that no order should be made for the examination of the plaintiff before the trial which would save him from personal attendance and examination before the court and jury.

Holman, for the plaintiff.

Aylesworth, for the defendant.

Armour, J.] [September 11.]

TOMLINSON ET AL. V. THE NORTHERN RY. OF CANADA ET AL.

Third party—Costs—Indemnity—Rules 107, 108 O. J. A.

The defendants were sued as carriers for the loss of certain horses which they had contracted to carry from T. to W., partly by their own line, and partly over the lines of other carriers. The loss occurred while the horses were being carried by the C. H. S. T. Co., with whom the defendants had stipulated that all loss in transit should be paid for by the parties in whose custody the loss occurred.

The defendants served notice on the C. H. S. T. Co., claiming indemnity from them as third parties, under Rules 107 and 108 O. J. A., to which the latter appeared, and an order was made, allowing them to intervene and assist the defendants in disputing the plaintiffs' claim against the defendants, and that they should be bound by the result.

The plaintiffs were consulted at the trial.

Held, that the plaintiffs were not the authors of the litigation with the third parties, and should not be ordered to pay the costs occasioned by adding them as parties.

W. H. P. Clement, for plaintiffs.

Boulton, Q.C., for defendants.

Till, Q.C., for third parties.