

Chan. Div.]

NOTES OF CASES.

[Cham.

valuers, which was intended to cover all claims which the owner might have of any kind; and the owner was to be at liberty to remove buildings, &c.; and on payment of the money to convey free from dower and all other incumbrances including taxes. The plaintiff was lessee of the property so taken and claimed compensation for disturbance.

Held, that the plaintiff was entitled to be compensated out of the money paid into Court, and that his claim was one which the owners was liable, under stat. 37, Vict. ch. 13, sec. 1, to pay, and which he should have taken into consideration, and which the evidence showed had been taken into consideration in the settling the amount to be paid by the government on taking possession of the lands.

Proudfoot, J.]

[Oct. 10.]

SMITH V. BABCOCK.

Examination—Defendant out of jurisdiction—Practice.

The bill was filed in Lindsay.

The plaintiff resided at Port Hope, his counsel at Toronto. The defendant resided at Montreal, and his counsel at Belleville. The official referee made an order that the defendant should attend at Cornwall to be examined before the local master on the ground that Cornwall was the nearest place in the jurisdiction to the defendant's residence. On appeal,

PROUDFOOT, J., *held* that the case was distinguishable from those where the party to be examined resided within the jurisdiction: (*Gallagher v. Gairdner*, 2 Chy. Cham. 480.) Here the plaintiff to be examined resided out of the jurisdiction, and Con. Stat. Can., ch. 79) gave liberty to the party to summons him within it (see *Moffatt v. Prentice*, 9 C. L. J. 159. It became then a question at which place in Ontario under the circumstances of the case it was most expedient the examination should take place, he thought Toronto. Appeal allowed costs in the cause.

W. Cassels, for the appeal.

Fitzgerald, contra.

CHAMBERS.

Osler, J.]

[Sept. 29.]

KINLOCK V. MORTON.

Rule 324—Judgment—Execution—Rateable division.

Where it appears that defendant has made or is intending to make a fraudulent disposition of his property, or is so dealing with it as to embarrass the plaintiff in reaching it by execution, the Court will, on a motion under rule 324, upon a proper case being made, order judgment and immediate execution.

In the event of other executions being obtained against the debtor's property before the time at which the plaintiff would be entitled to issue execution as on a judgment in default of appearance, and the amount realized being insufficient to satisfy all parties, a rateable division should be made.

Ogden, for the motion.

Aylesworth, contra.

Mr. Dalton.]

[Sept. 30.]

HEAD V. BOWMAN.

Rule 91—Joinder of parties—Alternate relief.

Plaintiff sued defendant for flooding his land by means of a mill dam, after the determination of a license to do so. The Great Western Railway had turned the waters of the stream into another channel which was not made deep enough to carry off all the water if the defendant's dam were removed, so that by the act of the Railway Company the plaintiff could not obtain complete relief by succeeding against defendant.

Held, that the plaintiff should have liberty under rule 91 to add the Railway Company as defendants.

J. G. Robinson, for the motion.

Aylesworth, contra.

Osler, J.]

[Oct. 1.]

IN RE ONTARIO BANK V. HARSTON.

Division Courts Act, 1880,—Prohibition—Territorial division—Unorganized tract.

The Division Court's Act, 1880, does not apply to the Division Courts in Territorial Divi-