

Prac.]

NOTES OF CANADIAN CASES—OSGOODE HALL LIBRARY.

Rose, J.]

[Sept. 9.

NICHOLSON V. LINTON.

Change of venue—Preponderance of convenience.

An action to recover the price of a quantity of steel, the principal defence being inferiority in quality. The plaintiffs lived in England, and their Montreal agent sold the steel to the defendant at Galt, where the latter lived, delivered the steel there, attended there for the purpose of endeavouring to settle the dispute, and was present at a test made in Galt.

The plaintiffs laid the venue at Cornwall, and the defendant moved to change it to Berlin, fourteen miles from Galt.

All the defendant's witnesses, six in number including the defendant himself, lived in Galt. The plaintiffs named no witnesses except the Montreal agent, but after notice had been given of the motion to change the venue, the agent directed one bar of the steel to be re-shipped from Galt to Montreal to have a test made, and then said generally that he would require to call experts from Montreal to prove the result of the test, but did not say how many. The defendant swore that the expense to him of taking witnesses to Cornwall would be about \$135, and to Berlin about \$14.

Held, that the very great preponderance of convenience was in favour of Berlin, and the venue was therefore changed.

Shroder v. Meyers, 34 W. R. 261, distinguished.

Ostler, Q. C., for the plaintiffs.

Holman, for the defendant.

Rose, J.]

[Sept. 9.

MCKAY V. PALMER.

Prohibition—Division Court—Matter of practice.

A motion for prohibition to a Division Court on the ground that the action was revived by the administrator of the plaintiff without serving a summons or notice on the defendant as required by the Division Court rules, was refused, the irregularity complained of being a mere matter of practice, and therefore not reviewable in prohibition.

Caswell, for the motion.

Holman, contra.

Ferguson, J.]

[September 13.

IN RE SOLICITOR.

Solicitor—Delivery of bill to third party—Right to taxation—Præcipe order.

Upon the application of a mortgagor, the mortgagee's solicitor was ordered by a county judge to deliver to the applicant a copy of the bill of costs of a sale under the power in the mortgage (see *ante*, p. 297), and the bill was delivered pursuant to the order.

Held, that although the delivery was, under s. 45 of the Attorneys Act, to be regarded as for the purposes of a reference to taxation, yet the person so obtaining the copy of the bill had not necessarily the right to tax the bill; and a *præcipe* order for taxation was set aside, when at the time of making it there were two matters in dispute, viz.: whether payment as such had been made by the mortgagees to the solicitor, and whether the mortgagees had precluded themselves from the right to tax the bill.

Hoyles, for the solicitor.

E. Douglas Armour, for the mortgagor.

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The following books have been received at the Library during July, August and September, 1887:—

- American Reports (various States), 202 vols.
- Annual Register for 1886. London, 1887.
- Appleton's Cyclopædia (N. S.), Vol. II. New York, 1887.
- Brett's Leading Cases in Equity. London, 1887.
- Chalmer's Bills of Exchange. 3rd edition. London, 1887.
- Connolly's New York Citations. Albany, 1887.
- Cox and Grady on Elections. 14th edition. London, 1885.
- Duncan's Mercantile Cases. London, 1887.
- Devlin on Deeds. San Francisco, 1887.
- Elphinstone and Clark on Searches. London, 1887.
- Encyclopædia Britannica. 9th edition. Vol. XXII. Edinburgh, 1887.
- Erichsen on Concussion of the Spine. London, 1882.
- Everest's Defence of Insanity. London, 1887.