

PLEADING.

1. Pleading.—*Chose in Action—Assignment—Setting off Claim in Damages against Assignor.*—In [an action by an assignee of a chose in action, the defendant may set up by way of defence a claim against the assignor sounding in damages if flowing out of and inseparably connected with the transaction giving rise to the subject of the assignment.—*Government of Newfoundland v. Newfoundland Railroad Company* (1888), 13 App. Cas. 190 followed. *Lillie v. Thomas.* (Wetmore, J., 1905), p. 203.]

2. Pleading.—*Non Cepit—Evidence—Right to Maintain Action.*—An agister of cattle who has indemnified the owner for loss or missing cattle has a special property therein to entitle him to maintain an action respecting them in his own name.—A 'denial by a defendant that he "unlawfully took or unlawfully detained the plaintiff's steer," is merely a plea of *non cepit*, and *non detinet*, and does not put in issue any right of property.—*Simpkinson v. Hartwell.* (Wetmore, J., 1899), p. 473. See AGENCY, 1—BILLS, NOTES AND CHEQUES, 2—PRACTICE—TRESPASS TO LAND—TRESPASS TO THE PERSON—TRUSTS AND TRUSTEES.

PRACTICE.

1. Practice.—*Action Commenced in Wrong Subjudicial District—Irregularity—Transferred—Irregular Summons—Adjournment—Rules 538, 540.* Held, (1) That the entry of an action in wrong judicial district contrary to s. 4, s. s. 2, of the Judicature Ordinance (C. O. 1898, c. 21), is an irregularity, not a nullity, and the defect may be cured under Rule 538, by transferring it to the proper judicial district. (2) That in case of an irregularity in a summons to set aside irregular proceedings, in not stating the objections relied upon, pursuant to Rule 540, the summons should not be discharged, but on the objections being stated on the return of the summons, it should be enlarged at the request of the party called upon. *The Saskatchewan Land Co. v. Leadley.* (Scott, J., 1903), p. 18.

2. Practice.—*Issue of Writ in Wrong District—Setting Aside.*—Where the

provisions of the Judicature Ordinance fix the judicial district in which a writ must issue in any action, a writ issued in the wrong judicial district is a void, not merely an irregular proceeding, which cannot be cured by an order transferring the cause into the proper district. Judgment of Scott, J., reversed.—Remarks by Scott, J., on the proper practice where a summons to set aside proceedings for irregularity is itself irregular in omitting to give the grounds relied upon. *Saskatchewan Land and Homestead Co. v. Leadley.* (Scott, J., 1903); (Court en banc, 1904), p. 82.

3. Practice.—*Service out of Jurisdiction—Contract by Correspondence—Non-resident—Sale of Land within the Jurisdiction—Damages—Rule 18.* A contract made by correspondence between a resident purchaser and a non-resident vendor for sale of land in the Territories—the acceptance of the vendor's offer to sell having been mailed in the Territories—is one which, according to the terms thereof, ought to be performed within the Territories.—In an action for damages for breach of such a contract:—Held, that service out of the jurisdiction was properly allowed.—The question, where it is doubtful, whether there was a completed contract should not be determined on an application to set aside the order for service *ex juris.* *Bishop v. Scott.* (Scott, J., 1904), p. 54.

4. Practice.—*Garnishee Summons—Defect in Affidavit—Irregularity—Rules 384 and 539.*—Held, (1) That the affidavit of an advocate, which on its face shewed that he had no personal knowledge of the facts, and which did not contain a positive statement of an indebtedness by defendant to plaintiff, is not a sufficient affidavit upon which to issue a garnishee summons under Rule 384, and a garnishee summons so issued was set aside.—(2) That a garnishee summons so issued cannot be treated as a mere irregularity so as to be waived under Rule 539, by taking fresh step. *Rumley v. Saxauer.* (Scott, J., 1904), p. 63.

5. Security for Costs—Insufficiency of Affidavit—Attempt to Read Supplementary Affidavit.—An affidavit on an interlocutory proceeding which is defective in not stating the grounds of the deponent's information and belief cannot be strengthened on the return of