

Com. Pleas.]

NOTES OF CANADIAN CASES.

[Com. Pleas.]

ment of claim to which no statement of defence was entered, and interlocutory judgment was signed and notice of assessment of damages given. When the case came on at the trial the defendant did not appear, and a jury was called, but on their disagreeing the learned judge discharged them and tried the case himself without a jury upon a fresh taking of evidence, and assessed the damages and gave judgment for the plaintiff.

Quære, whether under O. J. Act and former practice the learned judge had power to try the action and give judgment therein; but that it was not necessary to decide this point because it was not satisfactorily established that the writ of summons had been served on the defendant. The defendant was therefore allowed to file a statement of defence and a new trial directed; the judgment and execution to stand in the meantime as security.

J. K. Kerr, Q.C., for the motion.

Aylesworth, contra.

Divisional Court.]

[Feb. 28.]

BURNETT V. HOPE ET AL.

Partnership—Death of partner—Contract of hiring.

When a contract of hiring is entered into between a person and a firm, and afterwards one of the partners dies, the death of such partner puts an end to the contract.

Meyer, of Orangeville, for the plaintiff.

Moss, Q.C., and *Crerar*, for the defendant.

Divisional Court.]

[Feb. 28.]

THE ROYAL INSURANCE CO. V. BYERS.

Insurance—Fraud and misrepresentation—Right to recover back money paid.

Action to recover money paid by the plaintiffs to the defendant in settlement of a claim under a policy of insurance, the plaintiffs alleging that they had been induced to make the payment by the fraud and misrepresentation of the defendant.

Held, that the evidence failed to shew any fraud or misrepresentation; and if there were any it was immaterial; and further, the plaintiffs never offered to, and possibly could not, place defendant in his original position; and

that no amendment of the form of action could be made which could avail the plaintiffs.

Held, therefore, there could be no recovery.

Moss, Q.C., and *Clute*, for the plaintiffs.

Britton, Q.C., and *Dixon*, Q.C., for the defendant.

Divisional Court.]

[Feb. 28.]

RE DE SOUZA.

English Barrister—Right to practice in Ontario—Admission through Law Society.

Held, that to entitle an English barrister to practise at the Bar of Her Majesty's Courts in this Province he must be admitted to do so through the Law Society of the Province.

The applicant in person.

C. Robinson, Q.C. and *Walter Read*, contra.

Divisional Court.]

Feb. 28.

WEBSTER V. HAGGART.

Arbitration—Consent reference—Right to appeal.

At the trial of an action it was referred, the order of reference being "upon the consent of the parties, I do order and direct that the matters in dispute between the plaintiff and defendant, upon the issues joined in this action be referred," etc. It was urged that as the action involved the investigation of long accounts, and was, therefore, such an action as would be referred compulsorily, the consent must be taken to be to the arbitrator named and not generally to the reference, and that there was, therefore, a right to appeal from the award on the merits.

Held, that the reference was a consent reference, and there was no appeal.

Osler, Q.C. and *Justin*, for the motion.

Milligan (of Brampton), contra.

Divisional Court.]

[March 7.]

DONOVAN V. HERBERT.

Ejectment—Insolvent Act 1870, sec. 68—Proceedings under—Validity—Possession—Damages.

In ejectment plaintiff claimed title under a deed from the assignee in insolvency of one D. It appeared that prior to the issue of the writ of attachment in insolvency D. had conveyed