

Prac.]

NOTES OF CANADIAN CASES.

[Prac.]

PRACTICE.

Rose, J.]

[Jan. 12.]

BRICE V. MUNRO.

Demurrer—Setting aside as frivolous.

An appeal from the order of the Master in Chambers setting aside a demurrer to the statement of claim as frivolous was allowed.

Held, that the jurisdiction as to setting aside demurrers as frivolous should rarely be exercised where the point is a new one and is apparently raised in good faith to obtain the opinion of the Court.

Where it is evident that the party demurring is raising a question, manifestly insupportable, not admitting of argument, is in fact trifling with the Court either through gross ignorance or desire to delay, it may be convenient to at once set aside the demurrer.

The demurrer raised the question whether in an action against a shareholder, living in Ontario, in a joint stock company incorporated under a Dominion Act, it is sufficient to show that judgment had been obtained against the Company, and execution issued and returned unsatisfied in whole or in part in another Province, or whether it is necessary to show that execution has been returned unsatisfied in whole or in part in Ontario.

Held, that the demurrer was not frivolous.

Lash, Q.C., for the appeal.

Shepley, contra.

Rose, J.]

[Feb. 11.]

MOXLEY V. CANADA ATLANTIC RY. CO.

Affidavit of documents—Material for motion for better affidavit.

The usual affidavit on production of documents made by an officer of the defendants contained a statement that the defendants objected to produce their repairs book and train register, but that they would produce such portions of the books "as are relevant for inspection at the offices of the company," and a further statement that the company had "sealed up such parts of the said books as do not relate to the matters in question in this action."

The plaintiffs went to trial and called as witnesses the train despatcher, locomotive engineer and an engine driver of the defendants. The Judge at the trial refused on the evidence then given to direct the books to be unsealed.

The trial was then adjourned, and the plaintiff applied to the Master in Chambers for an order for a further and better affidavit of documents from the defendants, reading on the application the evidence taken at the trial, and asking to have the sealed up portions of the books unsealed for inspection. The Master made the order asked, and the defendants appealed to a Judge in Chambers.

Held, that the evidence taken at the trial was not proper material upon which to make an order for a better affidavit of documents.

Held, also, that as such evidence did not satisfy the Judge at the trial that he should direct the books to be unsealed, a Master or Judge in Chambers should not have been called upon to pass an opinion on the same evidence to accomplish what the plaintiff at the trial failed to do.

Held, also, that even if the evidence could be looked at, it would be impossible to say that the affidavit on production was untrue.

Jones v. Monte Video Gas Company, 5 Q. B. D. 557, considered.

Lefroy, for the appeal.

Clement, contra.

Rose, J.]

[Feb. 16.]

LYON V. MCKAY.

Affidavit on production—Motion for better affidavit.

An appeal from an order of the Master in Chambers refusing to direct plaintiff to file a better affidavit on production was dismissed.

The plaintiff, in his affidavit of documents, mentioned "Other letters and papers filed herein, the particulars of which I cannot now depose to," and stated "that such documents were filed in this Court in the motion made by defendant for his discharge from custody."

The defendant contended that the plaintiff should have scheduled these letters.

Held, that the plaintiff's affidavit was sufficient, and that the defendant must inspect the documents at the office where they were filed,