

## Com. Law Cham.]

## NOTES OF CASES—CORRESPONDENCE.

Osler, J.]

REGINA V. STEWART.

*Absconding debtor—Appearance—Debt, sufficient to support application for attachment—Crown suit.*

In an action at the suit of the Crown, an order was made for defendant's arrest as an absconding debtor. Service of the writ of attachment was accepted by his attorney, who entered an appearance to the writ:

*Held*, that this was a useless proceeding, and that the defendant should have put in special bail.

*Held*, on an application to set aside the writ, that any defect in the materials on which it was granted might be supplied by the affidavits used by the defendant on such application.

*Held* also, that the forfeiture of a recognizance to appear was a debt sufficient to support an application for an attachment under the Absconding Debtors' Act, R. S. O. ch. 68, and that such relief may be granted at the suit of the Crown; and this, when the defendant absconds to avoid being arrested for a felony.

*Aylesworth* for the Crown.

*Ewart* for defendant.

Armour, J.]

BRYAN V. MITCHELL.

*Ejectment—Equitable issue—Jury notice—R. S. O. ch. 50, sec. 257.*

In an action of ejectment where equitable issues are raised, issues must be tried without a jury under R. S. O. ch. 50, sec. 257.

*Holman* for plaintiff.

*J. Roaf* for defendant.

IN RE CITY OF TORONTO V. SCOTT.

Wilson, C. J.]

[Sept. 10.]

*Reference under Municipal Act, R. S. O., ch. 174, sec. 377—Award not made within a month—Enlarging time.*

The Court has power to enlarge the time for making an award, although the same has not been made "within one month after

the appointment of the third arbitrator," as required by sec. 377, R. S. O., ch. 174.

*Ferguson, Q. C.*, for applicant.

*J. K. Kerr, Q. C.*, contra.

Wilson, C. J.]

[Sept. 1.]

IN RE LARKIN V. ADAMS; WANTY V. ADAMS;  
MARNEY V. ADAMS.

*Mechanics' Lien Act—Costs—Prohibition.*

The defendants, owners of certain lands, applied for a writ of prohibition to the Judge of the First Division Court of the County of York to restrain further proceedings on an order made under the Mechanics' Lien Act by the said Judge, ordering the defendants to pay \$5 in each suit, being the plaintiffs' costs of preparing and registering their respective liens against defendants' property.

*Held*, that such costs, being those of a proceeding taken for the security and advantage of the creditors, can only be recovered as against the owners of the property if given by special statutory enactment, and cannot be claimed under the provisions of the Mechanics' Lien Act.

*Morphy, Winchester & Morphy*, for plaintiffs.

*F. E. Hodgins*, for defendants.

## CORRESPONDENCE.

*Trial by Judge, without a Jury.*

*To the Editor of the LAW JOURNAL.*

SIR,—The profession has a grievance which I think it will do no harm to ventilate through your journal. It has grown out of the practice which dispenses with the trial of civil cases by jury, except when either of the parties gives notice of a desire to have a jury.

We know that when a case is tried before a jury at the Assizes—and they retire for the purpose of deliberating upon their verdict—if they cannot agree after a reasonable time has elapsed, the Court discharges them, and the plaintiff is at liberty to bring the case on for trial again at the next