

[Prac.]

NOTES OF CANADIAN CASES.

[Prac.]

to the Court of Appeal under sec. 37 of the Act, and that, I think (having regard to the line of decision upon the question), is the only appellate forum open to the defendant. *Re Galerno*, 46 U. C. R. 379; *Trude v. Phoenix*, 29 Gr. 426; *McTiernan v. Fraser*, 9 P. R. 247. In my opinion the Divisional Court has no jurisdiction to review the judgment of PROUDFOOT, J. The plaintiff should have moved as in *McTiernan v. Fraser*, and in *Trude v. Phoenix*, to strike the action out of the list as improperly set down. For that reason I am disposed to strike out the case now, but without costs. PROUDFOOT, and FERGUSON, JJ. concurred.
Appeal struck out without costs.

Master in Chambers.]

[March 12.]

FRITH v. RYAN.

Affidavit on production—Cross-examination on.

Motion by the plaintiff *ex-parte* for leave to examine the defendant upon his affidavit on production filed.

Held, that Chy. G. O. 268 is superseded by Rule 283 O. J. A.

Rule 283 O. J. A. does not authorize the examination of a party upon his affidavit on production filed, and such an examination cannot be ordered, though the officer of a corporation may be examined on his affidavit on production, under Rule 226 O. J. A.

Motion refused.

A. J. Williams, for the motion.

Galt, J.]

[April 4.]

RE EBERTS v. BROOKE.

Prohibition—Division Court—Action on County Court judgment.

Application for a prohibition to the judge of the First Division Court of the County of Kent and to the plaintiff, to prohibit them from prosecuting this action, which is brought upon a County Court judgment for \$211.87, the plaintiffs abandoning the excess of their claim over \$100 and claiming \$100.

Held, that an inferior Court has no jurisdiction to entertain an action brought upon the judgment of a superior Court.

Prohibition granted.

E. D. Armour, for the application.

Aylesworth, contra.

Boyd, C.]

[April 9.]

ATTORNEY GENERAL v. GOODERHAM AND WORTS.

Foreign commission—Names of witnesses—Professional or expert evidence.

An action to restrain an alleged nuisance caused by the defendants' cattle byres in the city of Toronto.

An application by the defendants for the issue of commissions to certain cities in the U. S. A. to take evidence in their behalf concerning the cattle byres in those cities.

It was admitted that the only point on which witnesses in the States could be usefully examined was as to whether proper means had been taken by the defendants to minimize the objectionable accompaniments or incidents of their business. None of the persons sought to be examined were named in the application, nor was it sworn that such persons could not be ready to attend personally at the trial.

Held, upon this state of facts that the order for the commissioners must be refused.

As a rule the Courts discountenance professional or *quasi*-expert evidence from being brought before them in writing.

G. F. Blackstock, for the application.

Bethune, Q.C., contra.

Boyd, C.]

[April 15.]

McTAGGART v. TOOTHE ET AL.

Appearance entered gratis—Lis pendens.

The plaintiff issued a writ of summons and registered a certificate of *lis pendens* upon the lands of the defendant Toothe. The defendant, not having been promptly served with the writ, and being anxious to get rid of the suits, entered an appearance *gratis*.

The Master at London made an order in Chambers upon the application of the plaintiff striking out the appearance.

Held, upon appeal, that there is nothing in the Judicature Act or Rules which interferes with the well recognized practice that a defendant has a right to appear voluntarily, and to anticipate the service of actually issued process. Especially should his privilege to appear *gratis* be preserved in a case where his property is directly and prejudicially