ANNUAL

DIGEST OF CASES

DETERMINED

IN THE

COURT OF QUEEN'S BENCH,

AND

PRACTICE COURT,

1842.

BY JOHN HILLYARD CAMERON,
REPORTER TO THE COURT OF QUEEN'S BENCH.

TORONTO:
H. & W. ROWSELL, KING STREET.

1843.

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AMENDMENT.

At Nisi Prius.—Where a record had been entered for trial at the Assizes for the Home District, without having been sealed, and the omission was not discovered until the morning of the trial, which was several days after the Commission day, when the Judge at Nisi Prius allowed the record to be withdrawn, sealed and re-entered, the Court refused to set aside the verdict for irregularity, holding that the Judge had the power to allow the amendment before Jury sworn.—M'Lean *vs.* Neeson et al. Trinity Term, 5 & 6 Vic.

At Nisi Prius.—Where in the Jurata in the Nisi Prius record, the time and place of holding the Assizes were both wrong, being of a different day and of another District, than that in which the venue was laid, and the cause entered for trial, the Judge at Nisi Prius allowed an amendment to the proper time and place, and the Court considered that the amendment was properly allowed.—Doe Corbett *vs.* Sproule. Trin. Term, 5 & 6 Vic.

Ejectment. Notice to appear.—Where in a country cause the tenant was called upon, in the notice from the casual ejector, to appear within the first four days of the Term, and he obtained a rule nisi to set aside the service of the declaration for irregularity on that ground, the lessor of the plaintiff had leave to amend the notice on payment of costs.—Doe Kemp *vs.* Roe. Michs. Term, 6 Vic. P. C. Jones, J.

ARBITRATION.

Proof of submission.—In a declaration in debt on an award under bonds of submission, it is necessary to shew a mutual submission, and to prove the bonds executed by all the parties; but where the defendant in the course of the trial of the cause, allowed a credit to be given to him without objection for money paid on the award, it was held that he could not afterwards urge as a ground of nonsuit, that the plaintiff had not proved his own execution of the bond of submission.—Skinner *vs.* Holcomb. Easter Term, 5 Vic.

Costs on setting aside Award.—Where an award is set aside for irregular proceedings on the part of the arbitrators, such as the examination of witnesses in the absence of the parties, it will be set aside without costs.—Campbell *vs.* Boulton. Michs. Term, 6 Vic. P. C. Jones, J.

Conduct of Arbitrators.—Where on a reference to arbitration, after the arbitrators had commenced their investigation, both the plaintiff and his attorney requested delay, and understood that it had been granted, but the arbitrators made their award in favour of the defendant without giving further time, and without hearing all the testimony that the plaintiff might have offered, the award was set aside without costs.—Grisdale *vs.* Boulton. Michs. Term, 5 & 6 Vic. P. C. Jones, J.

Mistake in name in Award.—Where a verdict was taken for the plaintiff subject to a reference to arbitration, and the arbitrator made his award in favour of the defendant, but in it every where styled the plaintiff's Christian name "John" instead of "Patrick," the Court set the award aside, and granted a new trial.—McManman *vs.* McElderry. Hil. Term, 6 Vic.

ARREST.

Jurat of affidavit. Commissioner's name.—Where a defendant was arrested under a Commissioner's writ, and the Commissioner's name was not attached to the Jurat of the affidavit at the time of the arrest, although it was placed there before the motion was made to set the writ and arrest aside, the Court held the proceedings irregular, and set them aside with costs.—Black *vs.* Halliday. Trin. Term, 5 & 6 Vic. P. C. Macaulay, J.

Notice of claim.—If a plaintiff omit to indorse his claim for debt and costs on a bailable writ, the arrest under the writ will be set aside, although the omission is supplied immediately after the arrest is made.—Gibbs *vs.* Kimble. Michs. Term, 6 Vic. P. C. Jones, J.

ATTORNEY.

On an application for an attachment against an attorney, for having improperly granted a certificate of actual service to Holland, an articled clerk, when he had been absent from his service on account of ill health for nearly two years while he was under articles, and to strike Holland off the rolls, on which he had been admitted more than two years before, the Court refused both rules, on the ground of the long time that had elapsed since the clerk's admission as an attorney, but they made his master pay the costs of the application.—In re Holland and Whitehead. Trin. Term, 5 & 6 Vic.

BOUNDARY COMMISSIONERS.

Division lines.—Boundary line Commissioners, in establishing the division lines between lots in the same concession, are bound by the provisions of 59 Geo. III. ch. 14, and must ascertain the true line of the Township at the end of the concession from which the lots are numbered, and take the course of that as the true course of the side line, which they are required to establish, and they must also shew in their award the course of the line run to mark the boundary, and the position of the point of departure, or their award will be defective and void.—Caldwell *vs.* Wright et al. Easter Term, 5 Vic.

Boundaries between Districts.—Where there is a disputed boundary between two Districts, and one of the Districts appoints an agent for settling the boundary under the Act 1 Vic. ch. 19, the Court will not, on the refusal of the Justices in Quarter Sessions of the other District to appoint an agent on their behalf, direct a mandamus to them to do so, as the Act leaves it discretionary with them to proceed or not.—In re Boundary between Eastern and Johnstown Districts. Michs. Term, 6 Vic.

NOTE.—The Boundary line Commissioners Act having expired at the end of the last Session of Parliament, no proceedings can now be had under it.

CARRIER.

Warehousemen or Carriers, liability of.—Where in an action against common carriers from Kingston to Montreal, it was

proved that the plaintiffs had sent their goods to the defendants at a season of the year when they could not be forwarded, and the defendants received them into their store at Kingston to be forwarded at the earliest opportunity, and before the navigation had opened or the time for transportation had arrived, they were destroyed in the defendants' storehouse without their default by an accidental fire, and a verdict was found for the plaintiff,—Held that it ought to have been distinctly left to the Jury to find, whether the defendants received the goods only as warehousemen until the opening of the navigation, or whether their liability as carriers commenced from the moment of their receipt, and if not having been so left to them, the Court granted a new trial.—Ham *vs.* McPherson et al. Easter Term, 5 Vic., and Hil. Term, 6 Vic.

Act of God.—Where the owner of a vessel undertook by his bill of lading to carry goods, without any exception as to the dangers of the navigation or otherwise, and the goods were lost in a violent tempest,—Held that the owner was not liable.—Warren *vs.* Wilson. Trin. Term, 5 & 6 Vic.

False Invoices. Deck Cargo. General Average.—It is no ground of defence to a common carrier by water, for not carrying goods safely from a foreign country, or on a claim for general average, that the owner of the goods had prepared false invoices to defraud the revenue laws of this Province. And where the usage is proved to carry a deck cargo, if that cargo be thrown overboard in a storm to lighten the vessel, the owner of the vessel is liable for average to the owner of the deck cargo, without proving the value of the cargo in the hold, and without taking that value into account.—Grousette *vs.* Ferrie. Michs. Term, 6 Vic.

Deck Cargo.—Where it is the usage of the trade to carry a deck cargo in inland navigation, and such usage is known to the shipper, he cannot hold the master or owner responsible for a part of the deck cargo swept off in a storm, the bill of lading excepting the dangers of the navigation.—Stephens et al. *vs.* McDonell. Michs. Term, 6 Vic.

Warehousemen or Carriers.—Held on a subsequent trial of Ham *vs.* McPherson et al. (above), that it was a question for the consideration of the Jury, whether the defendants received the goods as carriers or warehousemen, and that the circumstance of the navigation being closed by the ice every year, at the season of the receipt of the goods, and also at the time of the fire, did not necessarily determine as a matter of law, that the defendants must be looked upon as having acted in their character of warehousemen only.—Ham *vs.* McPherson et al. Hil. Term, 6 Vic.

Coach-Proprietor, liability of for accident to Passengers.—In an action against a coach-proprietor for an injury done to one of his passengers, by the upsetting of his coach, it is no misdirection to inform the Jury that unless the driver exercised a sound discretion at the time the accident happened the owner is responsible, and if he could have exercised a sounder discretion or better judgment than he did, as by driving slower or faster, or by directing his passengers to get out at any dangerous or difficult passage, the proprietor is liable to make compensation for the injury sustained.—Stanton *vs.* Weller. Hil. Term, 6 Vic.

CASE.

Seduction.—In case by a father for the seduction of his daughter, who is not living with him at the time of the seduction, it is not necessary under the Provincial Statute 7 Will. IV. ch. 8, which says that in such case service by the daughter shall be presumed, to aver in the declaration, that the action is brought under that Statute.—M'Lean *vs.* Ainslie. Michs. Term, 6 Vic.

By locatee of the Crown before patent.—A locatee of the Crown before patent issued, may maintain an action on the case against a stranger for an injury done by him to his land by flooding, but where an order in Council has been made, that no deeds should issue from the Government for land in a particular part of a township, without a special reservation to the defendant of a right to flood certain portions of that land. Held that a locatee of the Crown could not maintain an action for the flooding of a portion of those lands by the defendant, as he would in such case be in a better position before grant from the Crown, than afterwards. —Miller *vs.* Purdy. Hil. Term, 6 Vic.

CORPORATION.

Assumpsit is not maintainable against the Niagara Harbour and Dock Company, incorporated by 1 Will. IV. ch. 13, on a parol agreement entered into by the Company to build an engine for a steamboat. —Hamilton *vs.* Niagara Harbour and Dock Company. Easter Term, 3 Vic.

COSTS.

Under Petty Trespass Act.—Where in the investigation of a charge under the Petty Trespass Act before Magistrates, the plaintiff was guilty of a contempt, for which the Magistrates committed him, but without warrant, and the plaintiff brought an action for false imprisonment against them, and recovered. Held that the action did not arise in consequence of any thing done by the Magistrates under the Petty Trespass Act, and that it was not therefore necessary for the Judge to certify his approval of the verdict, to entitle the plaintiff to his costs.—Armour *vs.* Boswell et al. Trin. Term, 5 & 6 Vic.

In trespass for assault and battery.—Where in trespass for assault and battery. the defendant pleaded that the plaintiff was wrongfully in the plaintiff's close, and molliter manus imposuit to turn him out, and the plaintiff replied excess, and obtained a verdict for one shilling. Held that he was entitled to full costs.—Caniff *vs.* Corwin. Trin. Term, 5 & 6 Vic. P. C. Macaulay, J.

Under 43 *Geo. III. ch.* 4.—Where the plaintiff arrested the defendant for £20, and a verdict was afterwards taken by the plaintiff by consent for £50, subject to a reference to arbitration, and the arbitrators awarded eleven shillings and three pence to the plaintiff, and it appeared by the affidavit of the arbitrators that the plaintiff shewed a cause of action to no greater an amount, the Court made a rule absolute to allow the defendant his costs.—McMicking *vs.* Spencer. Hil. Term, 6 Vic. P. C. M'Lean, J.

Setting aside Judge's order for.—Where a verdict was found for the plaintiff for a sum within the jurisdiction of the District Court in a defended cause, and the Judge at Nisi Prius did not grant a certificate for Queen's Bench costs, but the plaintiff afterwards obtained an order for costs in Chambers from another Judge, as if the damages had been assessed after judgment by default, the Court set the order aside.—McNab *vs.* Reeves. Hil. Term, 6 Vic. P. C. M'Lean, J.

COVENANT.

It is no breach against the covenantor on a covenant in a conveyance of land, that he is seized of an estate of inheritance in fee, without any thing to charge or encumber the same, that his wife is alive and has not barred her dower, nor is it any breach of a covenant for further, better and more perfectly conveying the land, that a deed of release of his wife's dower was tendered to the covenantor to be executed, and refused.—Bower *vs.* Bass. Easter Term, 5 Vic.

CUSTOMS, COLLECTOR OF.

A collector of Customs at a port of entry has no power to direct that all vessels and boats, coming from a foreign country by inland navigation, shall come to report

at a particular place within the port, and although it is necessary that all goods, whether dutiable or not, shall remain on board until a permit is granted to land them, yet the horses and carriages of travellers may be landed, after the arrival of the vessel, in which they have been conveyed, has been reported to the Collector, without any permit, and if the Collector should seize the vessel as forfeited, either because the master did not bring his vessel to the place he had appointed, or because the horses &c. of travellers were landed without a permit, such seizure would be illegal, and although in such a case no claim should be entered under 4 & 5 Will. IV. ch. 89, sec. 25, by the owner &c. for the vessel, the Collector would not be protected by that Statute in an action of trespass for the seizure.—McKenzie et al. *vs.* Kirby. Trin. Term, 5 & 6 Vic.

If dutiable goods be brought by inland navigation to a port of entry, and there entered, and the goods are afterwards landed without a permit, they are liable to seizure, but the vessel in which they were brought is not. And if the duties on dutiable goods are offered to a Collector, and he refuses to grant a permit, either on the ground that the sum tendered is insufficient in amount, or for any other reason which may not be tenable, if the goods are afterwards landed without a permit, they are liable to forfeiture, and the only remedy for the owner is by action against the Collector, for the injury which he may suffer by the refusal of the permit.—*Ib.*

DISTRICT COUNCIL.

The fees of the Sheriffs of the different Districts payable by the Districts, for services rendered by the Sheriffs in the administration of justice, are to be audited and paid by order of the Justices of the Peace of the several Districts in Sessions, and not under the direction of the District Councils.—In re Hamilton and Justices of London District. Trin. Term, 5 & 6 Vic.

EJECTMENT.

Erroneous Survey. Assessing damages for improvements.—The 59 Geo. III. ch. 14, sec. 12, which gives compensation to defendants in ejectment, for improvements made by them in consequence of erroneous surveys, applies as well to surveys made upon the request of individuals, as by public authority, and to surveys made as well since as before the passing the Act, and although the occupation of the defendant may have commenced since the passing of the Act.—Doe Gallagher *vs.* M'Connell. Easter Term, 5 Vic.

Indian lease.—Ejectment cannot be maintained by the assignee of a lease made by the Indians, of land for which no patent has been ever issued by the Crown, as there is no legal interest that can be recognized by the Court.—Doe Ermatinger *vs.* M'Cormack. Easter Term, 5 Vic.

Description of land in Deed.—Held, that a grant from the Crown for "all that certain parcel or tract of land in the Township of York, containing 200 acres more or less (including Lot 21 in 7th Concession), being the Clergy Reserve Lot 21 in 6th Concession west of Yonge Street in the said Township," the land not being set out by metes and bounds, conveyed to the grantee Lot 21 in 7th Concession, as well as 21 in 6th Concession.—Doe Keating, *vs.* Wyant. Easter Term, 5 Vic.

Notice under 4 Will. IV. ch. 1. sec. 52.—Where in ejectment it is necessary to leave the question of adverse possession in the defendant for 20 years, as a doubtful point to a Jury, it is not a case in which a plaintiff can be allowed to remedy legal defects in his title, by availing himself of the provisions contained in 4 Will. IV. ch. 1, sec. 52, and giving notice to the defendant as an intruder, or one having no claim or colour of claim to the posses-

sion.—Doe Lyons *vs.* Crawford. Easter Term, 5 Vic.

Demand of possession.—Where the defendant contracted for the purchase of land, and gave his bond and promissory notes for the payment of the money by instalments, but did not pay any of them, and his vendor afterwards sold to the lessor of the plaintiff, who demanded possession at the defendant's dwelling house in his absence, in the presence of several members of his family. Held that if a demand of possession were necessary at all, the demand proved was sufficient, as it did not appear that the defendant was not aware that it had been made.—Doe Sherwood *vs.* Stephens. Trin. Term, 5 & 6 Vic.

Fraudulent conveyance.—Where in ejectment against a purchaser under a deed made by a Sheriff of lands sold in execution, there was good reason to believe that the deed of the lessor of the plaintiff was fraudulent as against creditors, although the Jury found otherwise, a new trial was granted.—Doe McRae *vs.* Proudfoot. Michs. Term, 6 Vic.

Adverse possession.—Where on a question of adverse possession, it was proved that a line had been agreed on between the proprietors of the adjoining lots, by which they agreed "to abide as long as we live, and if our children find it wrong they may correct it." Held that this was a permissive occupation, and could not be considered an adverse holding.—Doe Murney et al. *vs.* Markland. Michs. Term, 6 Vic.

Title of lessor of plaintiff.—Where the lessor of the plaintiff endeavours at the trial to establish his title as a devisee, and fails in that, he is not thereby precluded from insisting on his right to recover as heir at law, or as a purchaser from the person last seised in possession.—Doe Hussey *vs.* Gray.—Michs. Term, 6 Vic.

Expiration of term in declaration.—Where the term in a declaration in ejectment has expired, the plaintiff is still entitled to recover nominal damages and his costs, although he cannot recover the possession.—Doe Leck *vs.* Aurman. Hil. Term, 6 Vic.

Sheriff's vendue. Proof of Writ.—In ejectment by a Sheriff's vendee for lands sold in execution, the writ of execution is sufficiently proved by its award on the roll, without producing the writ itself, and the recital of the writ in the Sheriff's deed, is evidence of its delivery to him.—Doe Stocking *vs.* Watts. Hil. Term, 6 Vic.

Notice to appear, amendment of.—Where in a country cause the tenant was called upon in the notice from the casual ejector, to appear within the first four days of the Term, and he obtained a rule nisi to set aside the service of the declaration for irregularity on that ground, the lessor of the plaintiff had leave to amend the notice, by making it to appear of the term generally or within four days thereafter, on payment of costs.—Doe Kemp *vs.* Roe. Michs. Term, 6 Vic. P. C. Jones, J.

ESCAPE.

In an action for an escape, it is a good plea that the plaintiff's Attorney, having received the debt and costs, authorized the Sheriff to discharge the debtor, but it is not good to plead, that after the escape the Sheriff paid the Attorney a sum of money in full satisfaction of the original debt and costs, and of all damages arising from the escape.—Stocking *vs.* Cameron. Michs. Term, 6 Vic.

ESTOPPEL.

Where the nominee of vacant land of the Crown, before any letters patent issued, made a conveyance of the land by deed poll, by the words "grant, bargain, and sell," without any recitals in the deed, but with a covenant that he was seized in fee, and the usual clause of warranty, and after the issuing of the letters patent to him, made another deed of the same lands to another person. Held that the assignees of the vendee under the deed

made after the letters patent issued, were estopped by reason of their privity with the patentee, from disputing the title of the assignee of the vendee under the deed made before the letters patent, and that the latter were entitled to recover possession.—Doe Irvine *vs.* Webster. Hil. Term, 6 Vic.

EVIDENCE.

Where the plaintiff in an action of trespass for cutting and carrying away timber, in which issue was joined on a replication of revocation of licence, called the agent of the defendant to prove that he had revoked the licence to him, and that the defendant still continued to cut the timber, and the witness denied the revocation to him. Held that the plaintiff might call other witnesses to prove that they had heard this witness admit that the licence had been revoked to him, and that the witnesses knew that he had still gone on and cut the timber, after he had made that admission.—M'Nab *vs.* Stinson. Trin. Term, 5 & 6 Vic.

EXECUTOR & ADMINISTRATOR.

New Trial.—Where in an action against an executor on the bond of his testator, non est factum was the only plea pleaded, and the plaintiff had a verdict, the Court refused to grant a new trial, and allow a plea of plene administravit, on the affidavit of the executor that he had administered all the assets before action brought, there being no satisfactory reason given why the plea had not been pleaded before. —McDonald *vs.* De Tuyle. Easter Term, 5 Vic.

Replication of lands.—In an action against an administrator, if the defendant plead plene administravit, and the plaintiff reply that the administrator had lands of the intestate in his hands to be administered, of which he could and might and ought to have satisfied the damages &c., the replication is bad on special demurrer. —Ward *vs.* M'Cormack, Adm'r.

Executors of joint contractors.—Where in an action of assumpsit on a contract against executors, they pleaded that the cause of action accrued in Scotland against the defendant's testator and one A. B. jointly, that A. B. is still living, and that by the law of Scotland, where the contract was made, if one of the parties to a joint contract die, his personal representatives are discharged, the plea was held bad on general demurrer, as by our Provincial Statute 1 Vic. ch. 7, the personal representatives of a joint contractor are made liable, notwithstanding the survivorship of the other, and the lex loci contractus applies only to the contract and not to the remedy.—Gilmore *vs.* Crooks et al. Ex'rs. Hil. Term, 6 Vic.

FERRY.

A letter from the Governor's Secretary authorizing a person in the name of the Government to take possession of a ferry, is not sufficient to establish his right to the ferry, so as to enable him to maintain an action for its disturbance.—Jones *vs.* Fraser. Trin. Term, 5 & 6 Vic.

If in an action for the disturbance of a ferry, it be shewn that the ferry is under the management of a third person, who receives the ferriage for his own benefit by agreement with the plaintiff, the plaintiff cannot recover.—*Ib.*

FRAUDS, STATUTE OF.

Where real property is conveyed to trustees for sale, for the satisfaction of debts, so as the sale be made within a certain period, and the sale be not made within that time, no use results back to the grantor, which can be taken in execution under the Statute of Frauds, for his debts.—Doe Laurason *vs.* Canada Company. Trin. Term, 5 & 6 Vic.

FRAUDULENT CONVEYANCE.

As against Creditors.—It is not always to be taken as conclusive evidence that a deed is fraudulent gainst creditors, a

that the debtor has remained in possession, receiving the rents and profits, for a long time after the execution of the deed.—Doe Roy *vs.* Hamilton. Trin. Term, 5 & 6 Vic.

As against creditors.—When property is conveyed in trust to pay debts, it cannot be considered as a fraudulent conveyance against creditors, not included with the other creditors, for whom the trust is declared.—Doe Laurason *vs.* the Canada Company. Trin. Term, 5 & 6 Vic.

FREDERICKSBURG.

Where it was shewn that a survey made in the Township of Fredericksburg, under 7 Geo. 4 ch. 16, was not made as nearly as could be ascertained in accordance with the original survey, according to the provisions of that Act, held that such survey was invalid.—Doe Clapp *vs.* Huffman. Michs. Term, 5 Vic.

GAMING.

A declaration under 10 & 11 Will. III. for playing at a lottery, is insufficient, if it state the charge for playing at a game "*called*" a lottery, without further specification.—Clarke *vs.* Donelly. Trin. Term, 5 & 6 Vic.

The provisions of 12 Geo. II. ch. 28 supersede the provisions of 10 & 11 Will. III. with respect to lotteries of horses, carriages, and other personal chattels.—*Ib.*

GUARANTEE.

Where goods were supplied to A. B. on the guarantee of the defendant, and A. B. gave his promissory note for their value to the plaintiff, payable at a particular place. Held that in the absence of proof of presentment at that place, or some excuse for non-presentment, the plaintiff could not recover on the guarantee.—Driggs *vs.* Wait. Easter Term, 5 Vic.

HUSBAND AND WIFE.

In trespass quare clausum fregit et debonis asportatis by husband and wife, where the general issue is pleaded, every thing will be intended after verdict to support the declaration, and although the wife's interest do not clearly appear in all the counts in the declaration, yet it will be supported on motion in arrest of judgment.—Howe et ux. *vs.* Thompson. Michs. Term, 6 Vic.

ILLEGALITY.

Promissory Note.—Where in an action upon several promissory notes, the defendant proved that they had been given by him for the price of tea which had been smuggled for him by the plaintiff, and the Jury were directed to find for the defendant, if they believed that such was the consideration given, and they found a verdict for the plaintiff for the amount of one only of the notes, the Court refused to grant the defendant a rule nisi for a new trial.—Beebee *vs.* Armstrong. Hil. Term, 6 Vic.

Fraud on the Revenue laws.—The same point decided as in Mullins et al. *vs.* Kerr, Michs. Term, 5 Vic.—Digest 1841, page 10.—Driggs *vs.* Wait. Hil. Term, 6 Vic.

INSOLVENT DEBTOR.

An insolvent debtor in custody on a criminal charge cannot obtain a rule for the weekly allowance in a civil suit.—Thompson *vs.* Hughson. Michs. Term, 6 Vic. P. C. Jones, J.

INSURANCE.

Where in a policy of fire insurance, losses by fire arising from riot or civil commotion were excepted, and in an action on the policy, it was negatived in the declaration that the loss arose from civil commotion, but loss by riot was not negatived. Held that the declaration was bad on general demurrer, as the terms riot and civil commotion were not synonymous.—Condlin *vs.* the Home District Mutual Fire Insurance Company. Hil. Term,

JUDGMENT.

Where one of two partners gave a confession of judgment for himself and partner, without his partner's concurrence, and collusively as alleged with the plaintiffs to defraud other creditors, and judgment was entered upon it, the Court upon strong evidence of collusion set aside the confession and judgment entered thereon with costs.—Joyce *vs.* Murray et al. Michs. Term, 6 Vic.

JURY.

By a liberal construction of the estreat Act 7 Will. IV. ch. 10, the Court will in certain cases relieve Jurors from fines imposed upon them at Nisi Prius, after the fine has been levied by the Sheriff.—In re Cole. Trin. Term, 5 & 6 Vic.

LANDLORD AND TENANT.

Plea of distress by superior landlord.—Where in covenant for non-payment of rent due on lease made by the plaintiff to the defendant, the defendant pleaded, that A. B. was seized in fee of the premises, and leased to C. D., whose term afterwards came to the plaintiff by assignment, and that afterwards and while that term continued, and before the action, A. B. distrained on the occupiers of the premises for rent due on the lease from C. D. and received a part of the rent from them, and the residue from the defendant. Held on general demurrer that the plea was good.—Leonard *vs.* Buchanan. Easter Term, 5 Vic.

Away going crop.—In an action of trover for an away going crop, which the plaintiff contended he was entitled to, under a covenant in his lease "that he should not sow fall grain in *all* fields now cleared, in the third or last year of the lease," on proving that he had not sowed the grain in *all* the fields, the Court held that the word all must be construed any; that the lease therefore did not militate against the common law rule; and that the plaintiff was precluded from claiming the away going crop.—Gilmore *vs.* Lockhart et al. Hil. Term, 6 Vic.

LIMITATIONS, STATUTE OF.

A plea of the Statute of Limitations, stating that the causes of action, "if any such there were or still are," did not accrue within six years, is bad on special demurrer.—Meyer *vs.* Burke. Hil. Term, 6 Vic.

MAGISTRATE.

Notice of action.—In the notice of action given to a Magistrate for an act done under the Petty Trespass Act, it is not necessary to specify the form of the action intended to be brought.—Wadsworth *vs.* Mewburn. Trin. Term, 5 & 6 Vic.

Appeal.—Where a charge of assault was preferred before two Magistrates under 4 & 5 Vic. ch. 7, who dismissed the complaint, ordering the complainant to pay the costs, and the Justices in Sessions would not entertain an appeal, the Court refused to grant a rule for a mandamus on the Justices in Sessions to hear the appeal, on the ground that the Statute contemplates an appeal only in cases of convictions.—In re Justices of Brock District.

MALICIOUS ARREST.

Principal and Agent.—An action for a malicious arrest cannot be maintained against a principal, on an arrest made on his agent's affidavit of his own apprehension that the debtor will leave the Province, the affidavit and arrest both being made without the Principal's knowledge, privity or procurement.—Smith *vs.* Thompson. Easter Term, 5 Vic.

Averment in declaration of debtor's leaving the Province.—Where in an action for malicious arrest on mesne process, the plaintiff declared that the defendant not being apprehensive that he would leave the Province without satisfying the debt for which he caused him to be arrested, falsely and maliciously made affidavit that he was so apprehensive, and caused the plaintiff to

be arrested &c., the declaration was held bad in arrest of judgment, on the ground that the inducement and averment were too large, as it was not necessary that the creditor should be apprehensive that the debtor would leave the Province of Canada, to justify him in making the affidavit and arrest.—Thompson *vs.* Garrison. Easter Term, 5 Vic.

Averment in declaration of debtor's leaving the Province.—The same objection being taken as in the last case. Held to be a good ground of nonsuit.—McBean et al. *vs.* Campbell. Michs. Term, 6 Vic.

Debtor leaving the Province.—A creditor may arrest his debtor, if he be going to leave the Province, whatever may be the cause of his absence, or however probable it may be that he will return.—McBean et al. *vs.* Campbell. Hil. Term, 6 Vic. See also Perrin *vs.* Joyce, Digest 1841, page 12, to the same point.

MALICIOUS PROSECUTION.

Record of acquittal.—If in an action for a malicious prosecution, the record of the acquittal of the plaintiff is produced at Nisi Prius, the Court cannot inquire into the circumstances under which it has been brought forward, but it must be received in evidence, although no order was ever granted for the delivery of a copy of the indictment to the plaintiff.—Lusty *vs.* Magrath. Easter Term, 5 Vic.

Probable cause.—Where in an action for malicious prosecution, for arson, it was shewn that the defendant had received information through the office of the Governor's Secretary, that certain persons, confined in the Provincial Penitentiary, could give information on the subject of the burning, and the defendant accordingly went to the Provincial Penitentiary, and there received the written statement of those persons, that the plaintiff had committed the arson. Held that if he acted bonâ fide upon this representation, that it formed a sufficient justification.—Oswald *vs.* Mewburn. Michs. Term, 6 Vic.

MANDAMUS.

Where a mandamus was applied for to be directed to the Warden of the London District, to swear in a person who claimed to be duly elected as a Councillor under the Municipal Council Act, the Court discharged the rule, it appearing that a Councillor had been returned and sworn in for the Township, which had been contested, the proper remedy in such case being by writ of quo warranto.—In re Brennan. Easter Term, 5 Vic.

MESNE PROFITS.

In an action for mesne profits after judgment by default in ejectment, it is not necessary that the costs of the ejectment should be taxed before they can be recovered.—Bank U. C. *vs.* Armstrong. Hil. Term, 6 Vic.

MONEY HAD AND RECEIVED.

Where according to the rules of a race for a purse of 100 guineas, the decision of the stewards appointed to superintend the race, was to be final on all questions respecting the winning or losing of the race, and the plaintiff's horse was the winner of the first heat, and came in first in the second, but in consequence of alleged foul riding was adjudged by the stewards to have been distanced, and another horse was declared the winner. Held that the plaintiff could not maintain an action for money had and received against the Treasurer of the races, who had not paid over the purse, on the ground that a majority of the stewards had not concurred in the decision against his horse, and on proof that there had in fact been no foul riding, he having assented to the decision of the same stewards on the first heat, and their decision according to the rules, being in all cases final.—Gorham *vs.* Boulton. Easter Term, 5 Vic.

[ORTGAGE.

After a mortgage in fee has become forfeited by the non-payment of the mortgage money, the mortgagee's interest in the mortgaged premises cannot be sold under an execution against his lands.—Doe Campbell *vs.* Thompson. Hil. Term, 6 Vic.

Where a mortgagor in possession after default made in payment of the mortgage money, received a letter from the mortgagee, who was in a foreign country, directing him to put a spring crop into the land, unless he came into the country himself in time for the mortgagor to remove in the Spring, and he did not come in until the Summer. Held that notwithstanding the relation between the parties of mortgagor and mortgagee, under the circumstances, the defendant could not be turned out of the land while the crops were growing, nor without a demand of possession.—Doe Patterson *vs.* Brown. Hil. Term, 6 Vic.

NEW TRIAL.

Misconduct of Jury.—Where after a verdict for the plaintiff, it was shewn that after the Jury had retired to consider their verdict, communications had been made by them to persons out of the Jury room, that they had been furnished with provisions and spirituous liquors, by persons who were known to be friendly to the plaintiff, and there was reason to believe that they had received an improper bias, a new trial was granted with costs to abide the event.—Armour *vs.* Boswell. Easter Term, 5 Vic.

Costs.—Where the Jury found for the defendant clearly against law, evidence, and the Judge's charge, the Court granted a new trial without costs.—Kirby *vs.* Lewis et al. Easter Term, 5 Vic.

After assessment of contingent damages.—Where in an action of trespass, there were several issues in law and fact, arising on several special pleas going to the whole cause of action, and the plaintiff before the argument of the demurrers, went to trial and assessed his damages at £17 10s., having proved only one act of trespass, and the demurrers were afterwards admitted to be against him, the Court refused to allow him to set aside his verdict, amend his pleadings, and go to a new trial.—Tyrrel *vs.* Myers. Trin. Term, 5 & 6 Vic.

Rejection of Evidence.—Where a new trial was moved for, on the ground that evidence had been rejected, which should have been received, and the Judge's notes of the trial did not shew the rejection, and he did not recollect it, a new trial was granted on the ground of misapprehension, on payment of costs.—Proudfoot *vs.* Trotter et al. Michs. Term, 6 Vic.

Costs. Second verdict.—Where a verdict given clearly against law and evidence was set aside by the Court without costs, and on a second trial the verdict was given in the same way, the Court set aside the second verdict also without costs.—Kirby *vs.* Lewis et al. Michs. Term, 6 Vic.

PARTITION.

Where a testator directed in his will that after the death of A. B. his land should be divided between his children by his Executors. Held that in the absence of any refusal of the Executors to make the partition, after the death of A. B., it was not a case in which the Court could direct partition to be made under 3 Will. IV. ch. 2.—Cronk *vs.* Cronk. Easter Term, 5 Vic.

PENAL STATUTE.

Buying disputed title.—Buying an equity of redemption in a mortgaged property, of which the person selling has been out of possession for many years, is not buying a disputed title within 32 Hen. VIII.—McKenzie q. t. *vs.* Miller. Michs. Term, 6 Vic.

Buying disputed title.—Semble, in registered titles, a conveyance by deed registered, after a prior conveyance by deed not registered, is not a purchase of a pretended title within 32 Hen. VIII. Major q. t. *vs.* Reynolds. Hilary Term, 6 Vic.

PLEADING.

False Imprisonment. Justification.—Where in trespass for false imprisonment, the defendant justified under a warrant from the President and Board of Police of Cobourg, under the Cobourg Police Act, for the non-performance of Statute labour by the plaintiff, and after alleging summons, appearance, conviction and warrant of distress, averred that he had made part of the sum directed to be levied, and that the plaintiff had no more goods, and thereupon justified under a warrant to imprison for the remainder of the penalty for twelve days absolutely, and not unless the fine and costs should be sooner paid, the justification was held bad, because the plaintiff had been imprisoned after part of the fine had been paid, and the warrant to imprison being for an absolute time, without any reference to the earlier payment of the fine and costs, was illegal and void.—Trigerson *vs.* Board of Police of Cobourg. Easter Term, 5 Vic.

Demurrers and issues in fact to same cause of action.—Where there were several counts in a declaration varying the same cause of action, to which the defendant pleaded distinct pleas, and the plaintiff having demurred to some of the pleas, and replied to the others, after judgment against him on the demurrers, recovered a verdict on the other pleas, no defence having been made at the trial, the Court held that under the pleadings the plaintiff's recovery was barred, but under the circumstances of the case, they granted a new trial, and gave the plaintiff leave to amend.—Watson et al. *vs.* Hamilton. Easter Term, 5 Vic.

Trespass, Justification of Entry.—Where in trespass quare clausum fregit et de bonis asportatis by one of two tenants in common, it was proved that the defendant entered upon the land under a writ of execution against the goods of the other tenant. Held that such entry could not be given in evidence under the general issue, but should have been specially pleaded.—Newkirk *vs.* Payne. Michs. Term, 6 Vic.

De Injuriâ.—Where in debt for rent on an Indenture of demise, the defendant pleaded payment to the superior landlord to avoid a distress, and the plaintiff replied de injuriâ generally, the replication was held bad on general demurrer.—Leonard *vs.* Buchanan. Michs. Term, 6 Vic.

Not guilty in Intrusion.—On an information of intrusion, the plea of not guilty puts in issue only the question of intrusion, and not the title of the Crown.—Regina *vs.* Munro. Hil. Term, 6 Vic.

Pleading Issuably.—Where the defendant obtained time to plead by Judge's order "on the usual terms," and the plaintiff, after pleas pleaded, took issue upon some and demurred to others, and the defendant obtained an order to amend his pleas or join in demurrer, with further time to rejoin "upon the usual terms,' and served both his orders, but afterwards and within the time in which he would have been entitled to rejoin without any order for further time, filed a special demurrer to the plaintiff's replication, upon which the plaintiff signed interlocutory judgment. Held that the interlocutory judgment was regular, the defendant being bound by his order for further time to rejoin after having served it, and the special demurrer being in contravention of the undertaking to rejoin upon the usual terms. Strathy *vs.* Crooks.—Michs. Term, 6 Vic. P. C. Jones, J.

PRACTICE.

Cassetur billa.—After judgment for the defendant on demurrer to a plea in abatement, and leave to amend on payment of costs, it is irregular for the plaintiff to enter a cassetur billa before the costs are paid.—Com. Bank *vs.* Jarvis et al. Easter Term, 5 Vic.

Seal on Nisi Prius Record. Amendment.—It is necessary that a Nisi Prius Record in the Home District should be sealed; but where the record had been entered for trial without a seal, and the omission was discovered on the morning of the trial, which was several days after the commission day, and the Judge at Nisi Prius allowed the record to be withdrawn and sealed, the Court refused to set aside the verdict for irregularity, holding that the Judge had the power to order the amendment.—McLean *vs.* Neeson et al. Trin. Term, 5 & 6 Vic.

Irregularity. Too late.—Where in an action against an absconding debtor, proceedings had been carried to judgment and execution against his lands, and he moved to set aside the execution for a variance between it and the judgment, and the plaintiff was allowed to amend. Held that he was afterwards too late to object to irregularities in earlier proceedings in the cause, as he should have brought them forward on his first motion.—Daugall *vs.* Lewis. Trin. Term, 5 & 6 Vic. P. C. Macaulay, J.

Irregularity. Misnomer in rule.—A rule Nisi having been obtained to set aside a bailable writ and arrest thereon for irregularity, the rule was discharged without costs for a variance between the Christian name of the plaintiff in the cause and the name in the rule.—Hibbert *vs.* Johnston. P. C. Macaulay, J.

Pointing out irregularities in rule.—Where a motion is made to set aside proceedings for irregularity, and the irregularity is mentioned specifically, neither in the rule, nor in the affidavit on which it is moved, nor pointed out in the rule by reference to the grounds disclosed in the affidavit, the rule will be discharged.—Hamilton *vs.* Howcutt. Trin. Term, 5 & 6 Vic. P. C. Macaulay, J.

Pointing out irregularities in rule.—Where a rule nisi was obtained to set aside service of process, for defects in the notice to appear, and the defect intended to be relied on was, that the notice was to appear in the *King's* Bench, instead of the *Queen's* Bench. It was held that the rule must be discharged, as the irregularity was not sufficiently pointed out in it.—Matthie *vs.* Lewis. Trin. Term, 5 & 6 Vic. P. C. Macaulay, J.

Affidavit sworn before partner of Attorney.—An affidavit sworn before the partner of the Attorney of the party on whose behalf the affidavit is made, cannot be read.—Hadley *vs.* Hearns et al. Trin. Term, 5 & 6 Vic. P. C. Macaulay, J.

Paying money into Court.—Where the defendant in an action of assumpsit, paid money into Court, and died, and the action abated, and the plaintiff afterwards sued his executors for the same cause of action, and took the money in the former suit out of Court, but proved his debt to no larger an amount. Held that he could not retain the costs of the first action, and recover against the executors for the difference between the sum remaining, and that originally paid in.—Carey *vs.* Choate et al. Michs. Term, 6 Vic.

Plea pais darrein continuance.—After judgment by default a plea of release puis darrien continuance will not be allowed.—Shaw *vs.* Shaw. Michs. Term, 6 Vic.

Witness. Service of process.—It is irregular to serve process on a witness, while attending in Court at Nisi Prius under subpœna.—Thompson *vs.* Calder. Trin. Term, 5 & 6 Vic. P. C. Macaulay, J.

Notice to produce.—Where a defendant residing in the Assize town, was served

upon Saturday, with a notice to produce a document in his possession, on the following Monday. Held that the notice was served in sufficient time.—Robertson *vs.* Boulton. Hil. Term, 6 Vic.

PROMISSORY NOTE.

Plea of no consideration—right to begin.—Where in an action on a promissory note, the defendant pleads no consideration, upon which issue is joined, the defendant must impeach the consideration, in the same way, as if he had given the plaintiff a notice to prove consideration, and it is not necessary for the plaintiff to prove the consideration in the first instance.—Sutherland et al. *vs.* Patterson. Michs. Term, 6 Vic.

Indorsement by Administrator.—It is no ground for impeaching the indorsement of a promissory note by an administrator, that the debtor at the time of the intestate's death, resided out of the jurisdiction of the Surrogate Court, by which the letters of administration had been granted. —Wright *vs.* Merriam. Michs. Term, 6 Vic.

Demurrer in action against maker and indorser under 5 Will. IV. ch. 1, and 3 Vic. ch. 8.—Where in an action against the maker and indorser of a promissory note under 5 Will. IV. ch. 1, and 3 Vic. ch. 8, the plaintiff declared in the form given by the latter Statute, but did not aver presentment to the maker and notice to the indorser. Held on demurrer by both defendants on that ground, that the plaintiff was entitled to judgment against the maker, and that the indorser was entitled to judgment against him.—Small *vs.* Rogers et al. Michs. Term, 6 Vic.

Guarantee.—Where the defendant had guaranteed certain advances of goods and money, to be made to A. B. by the plaintiff, and the plaintiff took the note of A. B., payable at a particular place, for the amount. Held that he could not maintain an action against the defendant, without proving a presentment there, and notice of non-payment to the defendant, and proving that there were no funds there, was not sufficient to charge the guarantee. —Driggs *vs.* Waite. Hil. Term, 6 Vic.

RECOGNIZANCE.

It is no ground for discharging the estreat of a recognizance to appear as a witness, that the magistrate who bound the witness over, did not give him a notice of the time he was to appear according to 7 Will. IV. ch. 10, sec. 8.—Regina *vs.* Thorpe. Hil. Term, 6 Vic.

RELIGIOUS SOCIETY.

The decision of the Court in Doe Reynolds *vs.* Flint, Michs. Term, 4 Vic., reversing former decision in Doe Methodist Episcopal Trustees *vs.* Bell, upheld.—Doe Methodist Episcopal Trustees *vs.* Brass. Trin. Term, 5 & 6 Vic.

REQUESTS, COURT OF.

In an action of trespass de bonis asportatis against the Commissioners of a Court of Requests, they pleaded a justification under the Court of Requests Act, and set out an execution for £11, debt and costs, not specifying how much was debt, and how much costs, and the plea was held bad, the amount for which execution had issued being beyond the jurisdiction of the Court, and not distinguishing whether the surplus was for debt or costs.—McRae *vs.* Osborne et al. Trin. Term 5 & 6 Vic.

SET-OFF.

Subsequent action for subject matter of set-off in former action.—Where two masons brought an action for work and labour against their employer, and recovered a verdict for £60, it was held that the employer could not afterwards bring an action against them for money which he had paid them on account, and which he had attempted to prove on the former action.—Hunt *vs.* M'Carthy et al. Trin. Term, 5 & 6 Vic.

Promissory note due before declaration.—A promissory note made by the plaintiff to the defendant falling due after the service of the plaintiff's writ, but before declaration filed, may be set off in the action.—Thorne *vs.* Haight. Hil. Term, 6 Vic.

Of judgments.—One of several defendants in a cause, against all of whom a verdict had been recovered, was allowed on summary application after judgment, to set off the amount of a judgment, which he had recovered against the plaintiff, against the plaintiff's judgment against him and his co-defendants, saving to the attorney his lien for costs.—Fortune *vs.* Hickson et al. Michs. Term, 6 Vic. P. C. Jones, J.

SHERIFF.

Case for fraudulent representation by.—A Sheriff cannot maintain an action on the case as for a fraudulent representation, when having seized goods on an execution of a third party, he is afterwards instructed by the defendant to seize the same goods on his execution, although on an adverse claim being set up, the plaintiff on the first writ withdraws his execution, and the defendant refuses either to withdraw his or indemnify the Sheriff, and the adverse claimant afterwards prosecutes the Sheriff, and recovers for the illegal seizure and detention.—Com. Bank *vs.* Jarvis. Easter Term, 5 Vic.

Assignment of debtor's property.—Where a debtor made an assignment to a creditor of property, which was seized by the Sheriff on several writs of execution, which came into his hands on the day, on which the assignment was made, and those writs were subsequently satisfied by the sale of other property of the debtor, but before they were satisfied, and a fortnight after the assignment, an attachment against the debtor's property came also into the hands of the Sheriff. Held that the property assigned was secured to the assignee against this attachment, although it had been liable to the preceding executions. —Hooker et al. *vs.* Jarvis. Trin. Term, 5 & 6 Vic.

Action against for not selling for best price.—Where in an action against a Sheriff for not selling lands in execution, for the best price that he could get for the same, put wrongfully and injuriously much below their real value, the defendant pleaded, that he sold the lands for the best price that he could get for them, the plea was held good on general demurrer. —Watson *vs.* McDonell et al. Trin. Term 5 & 6 Vic.

Attachment. Disputed property.—It is no sufficient ground for opposing a rule for an attachment for not returning a writ of execution against goods, that there is a question depending before the Court, respecting the title to those goods. The Sheriff should in such a case apply to have the time extended for making his return, until the question of property is decided.—Stull *vs.* McLeod. Trin. Term, 5 & 6 Vic. P. C. Macaulay, J.

Sheriff's Covenant. Money had and received.—In an action on a Sheriff's covenant, it is a good breach to state, that he was indebted in a named sum for money had and received by him as Sheriff, without specifying how or on what account the money was received.—Com. Bank *vs.* Jarvis et al. Michs. Term, 6 Vic.

False return. Plea of payment after action.—It is no plea to a breach of a Sheriff's covenant, shewing a false return of nulla bona to a writ of execution after levying the money, that the Sheriff paid the amount indorsed on the writ to the plaintiff, before the action against him on the covenant was brought.—*Ib.*

SPIRITUOUS LIQUORS.

The British Statute 24 Geo. II. ch. 46, disallowing the sale of spirituous liquors at one time, in quantities of less value than twenty shillings, to be consumed out of the shop, is not in force in this

Province.—Hadley *vs.* Hearns. Trin. Term, 5 & 6 Vic.

TAXES.

If a writ has been issued for the sale of land for taxes, but before sale under it, the taxes are paid, the sale is illegal and void.—Howe et ux. *vs.* Thompson. Michs. Term, 6 Vic.

TRESPASS.

Form of action, trespass or case.—It is a good count in trespass against a Justice of the Peace on motion in arrest of judgment, that he with force and arms issued his warrant, whereby he caused the plaintiff to be arrested and unlawfully imprisoned without any reasonable or probable cause, contrary to law and against the will of the plaintiff, and until the plaintiff gave his promissory note to A. B. to obtain his discharge from the imprisonment —Brennan *vs.* Hatelic. Easter Term, 5 Vic.

Action against Magistrates. Disallowance of Statute.—Where an Act had been passed by the Provincial Legislature, which was subsequently disallowed by her Majesty, but while it was in force the plaintiff had been convicted under it by the defendants as Justices of the Peace, and directed to pay a fine to be levied according to the Act, and the fine not having been paid, a warrant was properly issued by the defendants for his arrest and imprisonment, which however was not executed by the officer to whom it was directed, until after the disallowance of the Act was published in the Gazette.—Held, that as the conviction and warrant were legal, that the defendants could not be considered as trespassers, by the warrant being executed when the Act was no longer in force.—Clapp *vs.* Laurason et al. Easter Term, 5 Vic.

Justification of entry under award of Boundary Commissioners.—In trespass quare clausum fregit, the defendant justified his entry under an award of Boundary Commissioners, awarding the possession of the locus in quo to the defendant, and averred that he entered into the land under the award, as his freehold. Held bad on general demurrer, as the Commissioners had no power to award the possession, and the plea did not amount to liberum tenementum.—Villaire *vs.* Cecille et al. Easter Term, 5 Vic.

By possessor of Crown land without licence.—Where the owner of a lot of land encroached upon an adjoining lot belonging to the Crown, and took three successive crops off of it, without any permission from the Crown, and another person, who had taken possession of the same land, also without licence, about ten years before, and paid taxes and made clearings on it, warned off the owner of the other lot, after he had taken the third crop, and then cropped the land himself. Held that the owner of the adjoining lot had no property nor possession, to maintain trespass against him for that crop.—Killichan *vs.* Robertson. Michs. Term, 6 Vic.

Continuing trespass. Act of Agent.—Where the defendant as the Agent of a third party during the occupancy of a tenant of the plaintiff, put up a fence on the plaintiff's land, which continued there after the plaintiff resumed possession at the expiration of the tenancy. Held that the plaintiff could not bring trespass against the defendant, for the act done by him during the continuance of the lease.—Boulton *vs.* Jarvis. Hil. Term, 6 Vic.

USURY.

Where in an action against the makers of a promissory note for £61 5s. 0d., it was proved that A. B. had an execution against the property of the defendants, and that the plaintiff had a note made by A. B. for the same amount as the execution, viz. about £51, and the defendants obtained this note from the plaintiff, at the time it was due, hoping by that means to stop A. B's. execution, and gave the plaintiff their note, the subject of this

action, for £61 5s. 0d. payable one year after date with interest. Held in the absence of any further proof, that the note was not void for usury.—Doran *vs.* Bush et al. Michs. Term, 6 Vic.

VOLUNTARY CONVEYANCE.

A defendant after judgment and execution against his goods, having conveyed certain lands without consideration, which he held as the legal owner, under a deed containing no declaration of trust, and the same lands having been sold under an execution against his lands subsequently issued, the Court held that the deed, being a voluntary conveyance, was fraudulent and void against the Sheriff's vendee.—Doe Steel *vs.* McGill. Michl. Term 6 Vic.

WITNESS.

Privilege of Service of Process.—It is irregular to serve process on a witness attending under a subpœna at Nisi Prius.—Thompson *vs.* Calder. Trin. Term P. C. Macaulay J.

Evidence under Commission from Foreign Country.—If a witness is examined under a commission in a foreign country, it is not necessary at the trial to prove that he is still without the jurisdiction of the Court.—Watson *vs.* Lee. Hil. Term 6 Vic.

WORK AND LABOUR.

On counts for work and labour, and goods sold and delivered, the value of materials found and provided for carrying on the work, cannot be recovered.—Wilson *vs.* De La Hooke. Easter Term 5 Vic.

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