

Chan. Div.]

NOTES OF CANADIAN CASES.

[Prac.]

Held, also, that inasmuch as it appeared in the evidence that the defendants had at all times at least 160 shares of Ontario Bank stock credited to their account in the books of the Ontario Bank, and inasmuch as the Ontario Bank shares from time to time transferred by the defendants were not identified or earmarked in such a way as necessarily to lead to the conclusion that only the *residuum* after deducting these could be treated as the plaintiff's share, it could not be considered proved that the defendants had not 160 shares applicable to the plaintiff's loan on April 23rd, 1878.

J. F. Roaf, for appeal.

Cattanach, contra.

Cameron, J.]

[May 1.]

NIXON V. ASHBENHURST.

Dower—Will—Election—Express provisions in will in lieu of dower.

Although where the question to be tried in an action for dower is whether the plaintiff has elected to take the provisions made for her by her husband's will in preference to dower, the evidence adduced might not have been sufficient to establish such election in the absence of a distinct declaration in the will that the provisions thereof are in lieu of dower; yet, where a will in express terms makes provision for the testator's wife in lieu of dower, thus bringing directly to her mind that she cannot have dower and the provision of the will also, the same evidence might suffice to establish such election. Much less dealing with what is left her, will evidence an election on the widow's part in such a case, than would be sufficient where the sole question was whether she had elected to take the provisions made for her by the will, where such provisions according to the principles of equity would be inconsistent with an intention on the part of the testator to let her have such provisions and dower also.

Coleman v. Glanville, 18 Q. R. 42; *Cooper v. Watson*, 23 U. C. R. 345; *Baker v. Baker*, 25 U. C. R. 448, distinguished.

PRACTICE.

Rose, J.]

[April 29.]

RE FRIENDLY V. NEEDLER.

Division Court—Prohibition—Discretion.

A. entered a notice disputing plaintiff's claim in a Division Court suit, and objecting to the jurisdiction of the Court, but did not appear at the trial when the junior judge of the county of York, upon proof of the plaintiff's claim, and such facts as in the absence of proof to the contrary, established a *prima facie* case of jurisdiction, entered a judgment in favour of the plaintiff for \$44.75. On motion for prohibition on the ground of want of jurisdiction,

Held, following *Archibald v. Bushey* 7 P. R. 304, that the granting of prohibition under the circumstances was discretionary, that it would be unfair to place upon the judge trying the case the burden of cross-examining the witnesses to ascertain jurisdiction, that if a *prima facie* case of jurisdiction is made out the defendant is himself to blame if it is not displaced, and as neither a good defence on the merits was shewn, nor despatch used in making the application, the motion was refused with costs.

Walter Read, for the motion.

Hands, contra.

Rose, J.]

[May 30.]

RE YOUNG V. MORDEN.

Division Court—Prohibition—Increased jurisdiction.

In an action in the 9th Division Court of the county of Hastings, on a promissory note for \$200 and interest, the learned judge who tried the case (the junior judge of the county) entered judgment for \$200—the amount of the note—\$7.17 accrued interest, and costs.

Held, on a motion for prohibition, that the wording of the statute is clear, viz., all claims for the recovery of debt or money demand the amount or balance of which does not exceed \$200, and the motion was granted.

McCracken v. Creswick 8 P. R. 501, and *Widmeyer v. McMahon* 32 U. C. C. P. 187, referred to and distinguished,

Held, also, That as the learned judge who tried the case does not allow County Court