

*Held*, that the said income was chargeable with a proportion of the municipal income tax assessed against the estate through the executors and trustees.

*Raymond*, for executors and trustees. *J. Douglas*, and *D. T. Symons*, for the various parties.

Falconbridge, C.J.K.B.]

July 14.

IN RE DEY v. MCGILL.

*Division Court—Action against executor de son tort—Jurisdiction—Prohibition.*

Application for a prohibition to a Division Court of the County of Simcoe in an action brought against an alleged executor de son tort on a claim against the estate of the deceased. The claim rested on s. 72 (d), of the Division Court Act, R.S.O. 1897, c. 60. "When the amount . . . is ascertained by the signature of the defendant or of the person whom as executor or administrator the defendant represents."

*Held*, that it was not the intention of the statute that in one and the same proceeding the declaration was to be made which alone could make a defendant liable; and that before that point is reached the defendant is to be clothed in advance with the representative character so as to confer jurisdiction on the Court to pronounce the judgment against him. Prohibition granted.

*G. Grant*, for defendant, applicant. *Gash*, for plaintiff.

Province of Nova Scotia.

SUPREME COURT.

Russell, J.]

THE KING v. SKINNER.

[July 4.

*Vagrancy—Causing disturbance in public street—Summary conviction—Commitment for want of distress—Justice's finding as to insufficiency of distress—Warrant not shewing insufficiency of distress, or that distress would be ruinous—Invalidity—Curative sections not applicable—Return to habeas corpus—Affidavit of gaoler—Cr. Code ss. 207(f), 872(a), 875, 886, 839.*

1. A warrant of commitment for want of distress upon a summary conviction is invalid and will be quashed, if it recites only