

[Prac.]

NOTES OF CANADIAN CASES.

[Prac.]

Boyd, C.]

[March 3.]

RE STUBBING, ANTHES V. DEWAR.

*Administration—Solicitor's commission under G. O. Chy. 643—Practice.*

In an administration suit in which the estate was insolvent, the total assets being \$72,000, the liabilities \$138,475, and the creditors being 100 in number, and in which the commission of the solicitor who acted for all parties was allowed by the Master under G. O. Chy. 643, at \$995, eight creditors at the close of the suit, and without notice to the solicitor, until fourteen days before moving, applied for an order for the delivery and taxation of the solicitor's bill, instead of the allowance of the commission, on the ground that the commission was excessive.

*Held*, that the commission was not so exorbitant as to warrant the substitution of a taxed bill and a probable reduction by that mode of payment, especially as the benefit to the creditors would be trifling.

The scope of G. O. Chy. 643, is merely to aid in fixing a solicitor's remuneration. It is not intended to do strict justice, but is only a sort of convenient expedient for fixing costs without taxation.

A very liberal compensation in such cases is not *per se* a reason for reducing the commission or directing the taxation of a bill in its stead, nor *per contra* is a low or inadequate compensation a reason for increasing the commission, or directing payment by a taxed bill.

*Seem*, that in cases affected by this order any party interested in the estate who may desire that a solicitor should be paid in the particular matter or suit on the scale of a taxed bill instead of by commission, should give notice to the solicitor to that effect, and have the Master note it in his book, at the earliest stage possible in the proceedings; but there is no practice authorizing the substitution of a bill of costs for commission at the option of any party.

C. Bitzer, for the motion.

Hoyles and J. King, contra.

Galt, J.]

[March 28.]

BOOK V. RUTH.

*Appointment of Receiver.*

Motion for a receiver under the following circumstances:—The plaintiff had a judgment

against the defendant. The father of the defendant died a short time ago leaving the income to his wife for life, and on his death directed his executors to divide the corpus among certain parties, amongst others the defendant. *Foyle v. Bland*, L. R. 11 Q. B. D. 711, was cited as authority.

The learned judge made the following order:—Upon the motion of the plaintiff for an order that he be appointed a receiver without security and without salary, to receive the reversionary interest which the defendant has or may be entitled to under the will of his late father, Jacob Ruth, and all moneys that may be payable to the defendant under the provisions contained in the will of the said Jacob Ruth, upon reading, etc.,

1. It is ordered that the plaintiff be, and he is hereby, appointed receiver, without security and without salary, to receive the reversionary interest which the defendant has or may be entitled to under the will of the said Jacob Ruth, and all moneys that may be payable to the defendant under the said will, till the amount due the plaintiff for debt, interest and costs on his judgment recovered the second day of June, one thousand eight hundred and seventy-seven, and for costs of and incidental to this motion be fully paid and satisfied.

2. And it is further ordered that the costs of and incidental to this motion of the executors be retained by the said executors out of the share of the testator's estate coming to the defendant.

Boyd, C.]

[April 2.]

RE MURRAY CANAL, LAWSON V. POWERS.

*Marriage with deceased wife's sister—Uncanonical marriage—Tenancy by the courtesy—Will by infant married woman—45 Vict. c. 42. D.*

In 1866 one S. H. died undisputed owner of certain lands, leaving him surviving his widow and three daughters. The widow died in 1869. The eldest daughter married one L., and predeceased her mother, leaving L. surviving. The second daughter also pre-deceased her mother, and died unmarried and without issue. The youngest daughter, G., in 1869, married L., who thus married his deceased wife's sister. They had issue one child, who died in G.'s lifetime. In 1871 G. died. From before 1871