

Chan.]

NOTES OF CASES.

[C. L. Cham.

widow, but if she married again, the greater part of the rents, &c., were to be applied to the benefit of his children, and one of the children, Elizabeth, married and died before her younger brother or sister had attained to 21; but after the second marriage of the widow, and leaving surviving her husband and two sons, on a question as to whether the husband was entitled to money by the curtesy in her share,

Held, (1) that as the widow of the testator married before the death of her daughter Elizabeth, the estate of the latter, when she died, was not a remainder expectant on an estate of freehold; (2) that as Elizabeth took by devise and not by descent, she was technically a purchaser, and her issue could inherit as her heirs without actual seizin in her; (3) that a devise passes an estate as effectually as a feoffment and livery of seizin; (4) that seizin in law will suffice if actual seizin is unattainable; (5) that, therefore, the Master was right in finding the husband entitled as tenant by the curtesy.

Plumb, for the infants.

Watson, for the husband.

Blake V. C.]

[March 21.

HAYES V. HAYES.

Appeal—Filing report—Practice.

This was an appeal from the Master's report.

It appeared that the report had not been filed until after notice of appeal had been given.

The appeal was therefore dismissed.

Donovan, for appellant.

Armour, contra.

Blake V. C.]

[March 21.

MCCOLL V. MCCOLL.

Administration suit.

A mortgagee of the property in question refused to take his money, his mortgage having some time to run.

The property was sold by direction of the Court for \$3,000, subject to the mortgage. The purchaser assumed the mortgage and paid the balance, amounting to \$1,700 into Court.

The Master held that the \$1,700 was the amount upon which the commission under G. O. 643 was to be calculated.

BLAKE, V. C. held the Master's ruling correct. If the mortgagee had consented to a sale free from his mortgage, commission would have been allowed on the whole \$3,000.

H. Symons, for plaintiff.

Plumb, for infants.

COMMON LAW CHAMBERS.

Osler, J.]

[March 18.

TATE V. HUBBARD—UNION MUTUAL INS. CO.,
Garnishees.*Attachment—Attorney—Affidavit—Garnishee
disputing liability.*

The affidavit to obtain an attaching order may be made by the attorney of the judgment creditor or by a partner of the attorney.

A debt is garnishable where it consists of money due under an award and decree of the Court of Chancery, although the full amount is not ascertained by reason of the costs not having been taxed. When the amount in such a case is finally ascertained, execution may be issued against the garnishee, although he still disputes the liability.

Tilt, for judgment creditor.

Alan Cassels, for judgment debtor.

A. C. Galt, for garnishees.

Osler, J.]

[March 18.

CANADIAN BANK OF COMMERCE V. CROUCH,
TRUSTEES OF SPADINA AVENUE METHOD-
ODIST CHURCH, Garnishees.*Attachment—Attorney's lien—Costs.*

In garnishee proceedings a court of law will, as against the attaching creditor, protect an attorney's lien for costs of the action in which or by means of which the debt attached has been recovered, where the garnishee has notice of the lien.

This rule extends only to the costs incurred in the particular suit or proceeding, and not to the attorney's general costs against the client in other matters.

A court of equity would restrain a creditor who has obtained an attaching order at law from enforcing it against a fund recovered