

[Prac.]

NOTES OF CANADIAN CASES.

[Prac.]

PRACTICE.

Ferguson, J.]

[Nov. 1.]

DEVEREUX V. KEARNS.

Partition—Dowress as applicant—Allotting—Sale.

A person entitled to dower, though not assigned, is entitled to maintain proceedings for partition.

Rody v. Rody, 17 C. L. J. 474, overruled. But, where one only of several is desirous of partition, the proper proceeding is to have part allotted to him, leaving the others to hold jointly or in common.

Hobson v. Sherwood, 4 Beav. 184, followed. In the present case, as the plaintiff, a dowress, had already taken proceedings under the Dower Act to have her dower assigned, and confessedly only applied for a partition with the object of having a sale of the land, which the other parties interested opposed, the application for partition was refused, with costs.

W. Creelman, for the plaintiff.

J. Hoskin, Q.C., for the infant defendant.

Langlois, for the adult defendants.

Ferguson, J.]

[Nov. 1.]

RIDDELL V. MCKAY.

Security for costs—Rules 429, 431, O. J. A.

Where no reason was shown for reducing the amount of security required by a *præcipe* order for security for costs, issued under Rule 431 O. J. A., an order amending the *præcipe* order by reducing the amount to \$200, the security to be in the form of money paid into court, was reversed on appeal.

Held, that the provisions of Rule 429 O. J. A., do not so apply as to authorize the reduction of the security required by Rule 431 O. J. A.

Aylesworth, for the defendant.

W. H. P. Clement, for the plaintiff.

Wilson, C.J.]

[Nov. 2.]

RE WALSH V. ELLIOTT.

Prohibition—Division Court—Amount—Liquidation.

The plaintiff sued in a Division Court for \$114, \$75 on a promissory note and \$39 on a bill of costs, of which the amount was not ascertained by any act of the defendant.

Held, that the claim was within the competence of a Division Court.

Vogt v. Boyle, 8 P. R. 249, applied and followed.

J. B. Clarke, for defendant.

Shepley, for plaintiff.

Wilson, C.J.]

[Nov. 5.]

RE PAQUETTE.

County judge, jurisdiction of—Prohibition—48 Vict. ch. 26 sec. 6 (O.)—Persona designata.

A judge of a county court, acting under the authority of 48 Vict. ch. 26 sec. 6 (O.), removed an assignee for creditors and substituted another assignee. The first assignee, as alleged, refused to deliver over the keys of the place of business of the insolvent to the second assignee, and the judge made an order for the issue of a writ of attachment against the first assignee for contempt.

Held, that the judge, in acting under this statute, was not exercising the powers of the county court, but an independent statutory jurisdiction as *persona designata*, and had therefore no power to direct the issue of a writ of attachment; and prohibition was directed.

Aylesworth, for the first assignee.

Shapley, for the second assignee.

Wilson, C.J.]

[Nov. 5.]

MEWCOMBE V. McLUBAN.

Order after action dismissed—Statement of claim—Extending time—Master in Chambers, jurisdiction of—Rule 462, O. J. A.

An order of the 4th October, 1886, extended the time for delivery of statement of claim till the 12th October, but provided if it was not so delivered, the action should stand dismissed, with costs. Upon failure to deliver in time, the defendant signed judgment dismissing the action.

Held, that notwithstanding the dismissal of the action, an order could properly be made under Rule 462 vacating the judgment and further extending the time for delivering the statement, and the Master in Chambers had jurisdiction to make such an order.

H. Symons, for defendant.

J. B. Clarke, for plaintiff.