

Cham.]

## NOTES OF CASES.

[Cham.]

sumed that the Master would not properly discharge his duties.

Appeal dismissed with costs.

*Meredith*, (London), for appeal.

*H. Cassels*, contra.

Proudfoot, J.]

[June 6.]

NORVALL v. CANADA SOUTHERN RY. CO.

*Costs—Defence—Time of raising—Defence.*

This case is reported on page 98.

*Cuttanach* now moved to set aside the order making the decision in the Court of Appeal an order of the Court of Chancery, in so far as it directed the defendants to pay the costs of the appeal.

*H. Cassels*, contra.

PROUDFOOT, J.—The cases to which I was referred, of *Clark v. Smith*, 9 Cl. & F. 143; *McKenny v. Ramsay*, *Id.* 818; *Attorney-General v. Cox*, 3 H. L. C. 278, were instances of where the costs of the proceedings were disposed of by the House of Lords, and are no criterion as to the right to costs where the appellate Court is silent on the matter. The case of *Sams v. Johnston*, L. R. 6 C. P. 451, was also referred to as being in favour of the defendants; but on consideration it seems to me to be in favour of the plaintiff.

The Supreme Court, by making a disposition of these, must be assumed to have intended to allow the disposition of them by the Court below to remain.

Motion refused with costs.

Proudfoot, J.]

[June 6.]

WIGLE v. HARRIS

*Statement of claim, Enlargement of time for delivery of—Notices—Rule 42.*

The Master at Chatham made an *ex parte* order allowing the plaintiff two months further time to file his statement of claim.

On appeal. PROUDFOOT, J.—I think such an order ought only to be made on notice; and as any person affected by an order of the local Master may appeal to the Judge in Chambers under Rule 428, it was not necessary to apply to the local Master to rescind his order.

Appeal allowed with costs.

Proudfoot, J.]

[June 6.]

CAMERON v. LEROUX.

*Partition—Commission—G. O. Chy. 643.*

This was a partition suit. The Master at London allowed \$300 for commission, apportioning the same as follows:—The plaintiffs' solicitors, \$235; guardian of infants, \$25; widow, \$40; and certifying that the greater part of the work and responsibility of the conduct of the case was upon the plaintiff; that he had carefully considered the amount which the guardian could tax, if taxed costs were allowed, and specified the work done by the guardian in his office.

The charges of the agents of the guardian amounted to \$25.

PROUDFOOT, J.—I do not think that the sum allotted to the guardian should be measured only by the work done in the Master's office, he has to acquaint himself with all the facts of the case besides, which his clients cannot give by reason of their infancy, and which have to be gathered from relations and in many cases from other more impartial sources. He has not, as in the ordinary cases of a solicitor for an adult, merely to carry out his client's wishes, but he has to inform himself of what is best for them and to decide for them.

The guardian expressed his willingness, without prejudice, to accept \$50 for his share of commission, and without considering whether he might not be entitled to a larger sum, I think this is a reasonable offer and ought to be accepted.

The report will be varied accordingly.

Proudfoot, J.]

[June 6.]

MARTIN v. LAFFERTY.

*Service out of jurisdiction—When order to proceed necessary—Rule 45, O. J. A.*

*Held*, (affirming the Master in Chambers), that an order to proceed is unnecessary where the writ of summons and statement of claim have been served out of the jurisdiction, except in cases under paragraph (e.) of Rule 45, O. J. A.