

Cham.]

NOTES OF CASES.

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peared to have been paid. The application was on the ground of the alleged misconduct of the executor.

PROUDFOOT, J., granted the order without going into the merits between the widow and the defendant the executor, on the ground that the infants, have a right to an administration order of an estate in which they are interested on the mere suggestion of their next friend that it would be for their benefit.

Costs reserved.

Langton, for the motion.

Hoyle, contra.

Proudfoot, J.]

[Nov. 18.]

BARKER V. LEESON.

*Interpleader issue—County Court—Power of an issue directed from Superior Court.*

An interpleader issue had been directed by the Court of Chancery to be tried at the sittings of a County Court. The plaintiff sent a jury notice and the trial was had accordingly, and a verdict returned for the plaintiff. The defendant took certain objections at the trials and afterward the County Court judge made absolute a rule to set aside the verdict and enter a non-suit.

*Held*, affirming the decision of the Master in Chambers, that the County Court judge had no power to set aside the verdict and enter a non-suit, because the grounds on which he did so embraced matters of law as well as matters of fact. The Court (PROUDFOOT, J.) desired to express no opinion as to whether in this case the County Court judge had power to reserve the question whether the evidence at the trial sufficed to establish the plaintiff's case.

Bain, for the appeal.

Reeve, contra.

Osler, J.]

[November 12.]

CLARKE V. CREIGHTON.

*Costs—Taxation—Married woman—Retainer.*

Plaintiff sued C. and G., of whom G. was a married woman, and obtained a verdict against both. In turn both defendants obtained a rule to enter a nonsuit for them or a verdict for G. The latter part of the rule was made absolute. The taxing officer disallowed the plaintiff any

costs in term because he had not abandoned his verdict against G., and taxed to her one half the costs of the term motion, both defendants having appeared by the same attorney.

*Held*, on appeal, that a proportion of the costs in term should be allowed to the plaintiff, and it was referred to the Master to enquire whether any binding contract of retainer had been entered into by G., and if not, that no costs other than disbursements should be allowed to her.

S. R. Clarke, for plaintiff.

N. Miller, for defendants.

Osler, J.]

[Nov. 21.]

IN RE MURDOCK, AN INFANT.

*Habeas Corpus—Infant, custody of.*

Where the father and mother of a female child under five years of age were living apart, the Court refused under the circumstances mentioned in the judgment to take the child out of the custody of the mother, but allowed the father to have access to the child at stated times.

S. H. Blake, Q. C., for mother.

Murphy, for father.

Osler, J.]

[Nov. 19]

HUGHES V. FIELD.

*Attachment—Absconding debtor—Costs—Order ex parte.*

M. obtained a judgment in the ordinary way against the defendant, who had absconded. Several writs of attachment against defendant, as an absconding debtor, were issued. H., one of the attaching creditors, but not the first one, obtained *ex parte* an order that the costs of all the writs of attachment should be paid out of defendant's assets before anything should be paid to the judgment creditor, although there was a fund not liable to the execution creditor, but which was available for the attaching creditors.

*Held*, that the order must be set aside with costs.

*Held* also, that under R. S. O. cap. 68, sec. 20, only the costs of suing out and executing the writ can be allowed.

An application to discharge an *ex parte* order