

Ct. Ap.]

NOTES OF CANADIAN CASES.

[Ct. Ap.]

IN RE GILBERT, GILBERT V. HUDLESTONE.

Appeal on question of costs—Special leave—
J. A. 1873, s. 49.—(Ont. J. A. s. 32.)

When leave is given to appeal from an order as to costs which are left by law to the discretion of the judge, the Court of Appeal will still have regard to the discretion of the judge, and will not over-rule his order, unless there has been a disregard of principle, or misapprehension of facts.

[C. A.—28 Ch. D. 549.]

BAGGALLAY, L.J.—“When the Court of Appeal is acting under that section (*i.e.*, s. 49) it must still recognize the discretion of the judge, as in other matters which are left to his discretion. If there has been any violation of principle, or misapprehension of facts the Court will interfere, but not otherwise.”

DOBLE V. MANLEY.

Foreclosure action—Subsequent incumbrance—One period named for redemption.

In a foreclosure action, one day will be fixed both for the mortgagor, and subsequent incumbrancers, to redeem the plaintiff.

[Chitty, J.—28 Ch. D. 664.]

CHITTY, J., said that he had consulted KAY, J., and PEARSON, J., and that they were all unanimously of opinion that when defendants did not appear, one time only should be fixed for redemption. . . . “If any subsequent mortgagee appeared, and claimed to have successive periods fixed, the Court would have to consider whether he was entitled to them.”

IN RE WARD.

Solicitor and client—Costs—Taxation—Assignee.

Whether an assignee of one or several bills of costs can obtain an order for taxation under 6 & 7 Vict. c. 73. s. 37 *quere*.

If an assignee can apply for an order for taxation, he must make a special application; he is not entitled to an order of course.

Where it is sought to tax one only of several outstanding bills of costs, the application must be a special application.

[Pearson, J.—28 Ch. D. 719.]

PEARSON, J.—“In my opinion an order to tax one only of several bills of costs ought not to be obtained as a common order. A person ought not to apply for taxation piecemeal, but he ought to ask to have all the outstanding bills of costs against the client taxed together, otherwise there would be a risk of doing the greatest injustice to one side or the other. If it is possible for an assignee of costs

to obtain an order for taxation, in my opinion he cannot obtain a taxation of one bill of costs, only by means of the common order, even if only one of the bills of costs have been assigned to him; he can only do so by means of a special application. The order to tax must be discharged with costs.”

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LAW SOCIETY.

COURT OF APPEAL.

*BEATTY V. THE NORTH-WEST TRANSPORTATION COMPANY.**Incorporated Company—Directors of Company—Stockholders.*

J. H. B., one of the defendants, a director of the defendant company, personally owned a vessel “The United Empire,” valued by him at \$150,000; and was possessed of the majority of the shares of the company, some of which he assigned to others of the defendants in such numbers as qualified them for the position of directors of the company, the duties of which they discharged. Upon a proposed sale and purchase by the company of the vessel “The United Empire” the board of directors (including J. H. B.), at their board meeting adopted a resolution approving of the purchase by the company of such vessel; and subsequently at a general meeting of the shareholders, including those to whom J. H. B. had transferred portions of the stock, a like resolution was passed, the plaintiff alone dissenting.

Held, reversing the judgment of the Court below, 6 O. R. 300, that although the purchase on the resolution of the directors alone might have been avoided, the resolution of the shareholders validated the transaction, and that there is not any principle of equity to prevent J. H. B. in such a case from exercising his rights as a shareholder as fully as other members of the company.