of the rules of Court, the former practice remains in force. That practice is defined by G. O. 610 by which an order may be obtained upon *præcipe*, appointing a guardian *ad litem* on whom service is to be made. The official guardian is to be such guardian under sect. 75 of the Judicature Act. In *Weatherhead* v. *Weatherhead*, 9 P. R. 96, an application was made in Chambers for such an order, but that is not necessary under G. O. 610. I cannot give effect to the objection made against the taxing officer's ruling. Something may be allowed on the taxation if the personal service on the infants has facilitated the official guardian in communicating with them as their relatives, but beyond this I do not think I can interfere. I have conferred with PROUDFOOT, J., in arriving at this conclusion.

*J. H. Macdonald*, for the plaintiff.

*Harcourt*, for the official guardian representing the infant defendants.

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Boyd, C.] [June 9.

MCLEAN V. THOMPSON.

*Notice of trial, regularity of.*

An action to set aside a fraudulent conveyance, brought in the Chancery Division of the H. C. J. The defendant, Garland, gave notice of trial at the Toronto June Assizes to the plaintiff and his co-defendant Thompson. The plaintiff applied to the Master in Chambers to set aside the notice, but his application was dismissed.

18th June—*A. C. Galt*, for the plaintiff, appealed from the Master's order, contending that the notice was irregular even if *Rymal* v. *McEachren*, (decided by the Master) 3 C. L. J. 106, should be approved. He argued that under the wording of Rule 255 O. J. A. one of two defendants cannot give notice of trial. The rule says, "either party may give notice of trial," "either party" must mean "the plaintiffs" or "the defendants," not "one of the plaintiffs" or "one of the defendants."

*T. S. Plumb*, for the defendant Garland, *contra*, cited *Rymal* v. *McEachren, (supra);* Rules 255, 264, 266 O. J. A.; Chy. G. O. 161; *Ambroise* v. *Evelyn*, 11 Chy. D. 759; *Crowther* v. *Duke*, 6 Dowl. P. R. 409; Griffith and Loveland's Judicature Acts, O. 35, rr. 4 and 4 a.

BOYD, C.—*Rymal* v. *McEachren, (supra)* of which I approve, decides that this action may be properly set down and tried at the current Toronto assizes. The only new question is whether it is open for one of two defendants, under Rule 255, to give notice of trial. Having regard to the former practice, I think that it is competent for one of several defendants, where the action is as to all ripe for trial, to bring the case on under Rule 255. "Either party" is to be read *any* party. That is the word used in the original of this part of the rule, namely, Chy. G. O. 161, and the late order repeating it No. 605. That order passed on 12th February, 1872, provides that in cases where issue is joined three weeks before the day appointed for the commencement of the sittings, and the plaintiff neglects to set down the cause for hearing at the sittings next after the cause being so at issue, any defendant may set the cause down for hearing . . . and may serve notice of hearing on the other parties to the cause. G. O. 163 provides that notice of setting down is to be served by the party setting down. These orders were to remedy the former practice which prevailed in England, which permitted one defendant to set down a cause and serve the plaintiff with *subpœna* to hear judgment, and then it devolved on the plaintiff to serve the other defendants: *Clarke* v. *Dunn*, 5 Mad. 474; *Smith* v. *Wells*, 6 Mad. 193. I regard this notice of trial as regularly given, and dismiss the appeal with costs in the cause to the respondent.

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Mr. Dalton, Q.C.] [June 11.

MILES V. CAMERON.

*Foreclosure—Motion to open.*

A motion to open up a judgment of foreclosure.

It was sworn by the applicant that the mortgage debt and costs for which foreclosure was ordered, amounted to about $3,000, and that the value of the property was $7,000, and he clearly showed that his delay in paying the debt arose because he thought the effect of the judgment would be a sale of the property.

The Master found upon the affidavit filed that $7,000 was an over estimate, but that the claim was a good deal less than the value of the property, but did not feel justified in opening the foreclosure.

*Motion dismissed with costs.*

*F. Arnoldi*, for the application.

*W. Fitzgerald*, contra.