

[Prac.]

NOTES OF CANADIAN CASES.

[Prac.]

Moss, Q.C., for the executors.
Maclean, Q.C., for Joseph Gilmore.
J. Hoskin, Q.C., for other infants.
Cassels, Q.C., for the widow.
R. Cassels, for some children.
Swayze, for executrix of deceased legatee.

PRACTICE.

C. P. Div. Ct.] [March 12.]

McMAHON v. LAVERY.

Jury notice—Legal and equitable issues—C. L. P. Act, ss. 257 and 258.

The plaintiffs sued, as executors of McB., to recover from the defendant, a solicitor, moneys placed in his hands for investment, and notes and money received by him as solicitor and agent for McB., and prayed that the defendant might be ordered to assign certain securities in his hands. The defendant set up by way of defence a certain agreement, under which he alleged that the plaintiffs were estopped from making their claim. The plaintiffs then amended their statement of claim, setting up fraud in procuring this agreement, and asked that it might be declared void, and be delivered up to be cancelled.

Held, that the case came within ss. 257 and 258 of the C. L. P. Act, and that the legal issues should be tried by a jury, and the equitable issues by a judge without a jury, unless the judge at the trial, in the exercise of his discretion, chose to try the whole case without a jury; but that the defendant was not entitled as a matter of right to have the jury notice struck out.

Temperance Colonization Society v. Evans, ante p. 37, followed.

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

Watson, for the plaintiffs.

Wilson, C.J.]

[April 1.]

WILLIAMSON v. AYLMER.

Taxing officer, powers of—Evidence—Solicitor—Retainer.

The taxing officers have the power to call for evidence on taxations pending before them.

Where the plaintiff was out of the jurisdiction, and a taxing officer had refused to proceed with the taxation of her costs of the action against the defendants until she was produced before him for examination, touching her retainer of the solicitor in whose name the proceedings in the action had been conducted, it was directed that the officer should first examine other witnesses, and then, if unable to decide the question of retainer, should report to a judge in chambers.

H. J. Scott, Q.C., for the plaintiff.

Aylesworth, for the defendants.

Rose, J.]

[April 2.]

IN RE MACFIE v. HUTCHINSON.

Prohibition—Division Court—Attachment of debts—R. S. O. c. 47, s. 125.

The defendant was the medical health officer of the city of London, and his monthly salary as such was attached in a Division Court action in the hands of the city corporation to answer a debt due to the plaintiff. It was claimed by the defendant that \$25 of the salary was exempt from attachment under the Division Court Act, R. S. O. c. 47, s. 125, which provides that "no debt due or accruing due to a mechanic, workman, labourer, servant, clerk, or employee for, or in respect of, his wages or salary, shall be liable to seizure or attachment under this Act, unless such debt exceeds the sum of \$25, and then only to the extent of such excess." No facts were in dispute, and the Division Court judge determined as a matter of law upon the construction of the above section, and of the Public Health Act, 1884, and amending acts, the Municipal Act, 1883, s. 281, and by-law No. 319 of the city of London, that the defendant's salary was not exempt from attachment.

Held, that the decision of the judge could be reviewed upon a motion for prohibition; and

Held, that the defendant was an employee within the meaning of R. S. O. c. 47, s. 125, and that his salary to the extent of \$25 was exempt from attachment under that Act.

G. W. Marsh, for the defendant.

Shepley, for the plaintiff.