

tors, if in their discretion they should see fit, to pay the income of her estate, in part or in whole, to and for his benefit and advantage, at such time and in such manner and sums as they should see fit, leaving it to their option and discretion whether they should pay him any sum. An order was made in a Division Court action, after judgment, appointing the judgment creditor receiver to receive the amount of his judgment from the executors, whenever they should exercise their discretion to pay the judgment debtor the amount of the judgment, or any part thereof. Prohibition was granted against the enforcement of this order.

*Held*, following *The Queen v. Judge of County Court of Lincolnshire*, 20 Q.B.D. 167, that if the order was intended to interfere with the action of the executors, it should not have been made; and if it did not so interfere, it was nugatory.

*Elliott*, for judgment creditor. *Shepley*, Q.C., for executors.

Meredith, C.J., MacMahon, J.]

[Dec. 14, 1898.]

STUART v. McVICAR.

*Judgment—Specific performance and damages—Interlocutory judgment—Subsequent delivery of statement of claim—Assessment of damages.*

The writ of summons was indorsed with a claim for specific performance of an agreement "and for damages for breach of the said agreement." The defendant not appearing, interlocutory judgment was given against him on the 16th April, 1898, for damages to be assessed. On the 12th May following a statement of claim was delivered, and on the 16th May the damages were assessed by a Judge of the High Court at a sittings for the trial of actions.

*Held*, that the interlocutory judgment was irregular; the plaintiffs, upon default of appearance, should have delivered a statement of claim, and, if no defence delivered, proceeded to judgment by motion.

*Held*, also, that the plaintiffs had no right to treat the statement of claim delivered by them as nugatory, and proceed to assessment of damages on the writ of summons as forming the record.

*Semhle*, that the plaintiffs could properly claim specific performance, and, in the alternative, damages for breach of the agreement.

*Watson*, Q.C., for plaintiffs.

Falconbridge, J., Street, J.]

[Dec. 14, 1898.]

BERNESKI v. TOURANGEAU.

*Solicitor's lien—Attaching order—Priorities—Waiver of lien.*

The lien of a solicitor upon a verdict recovered for his client will prevail against an attaching order obtained by a creditor of the client. *Shippey v. Grey*, 28 W.R., 877, followed.