

Held, also, that the Court consider or deal with the questions whether the right of C. to the property had been lost by adverse possession, or whether petitioner's right of action was barred by the Statute of Limitations.

R. L. Borden, Q.C., and *W. McDonald*, for appellant.

A. Drysdale, Q.C., for petitioner.

Full Court.]

[March 9.

MACK v. MACK.

Partner winding-up firm's business—Compensation—Commission to executors.

On appeal from judgments settling terms of order for accounting, and as to Referee's report,

Held, inter alia, that a partner is not entitled to compensation for winding up the business of the firm.

Also, that in determining the amount of compensation to be awarded to executors under the statute, the commission of five per cent. mentioned must be treated as the maximum amount, and should not be allowed where the amount of the estate is large in proportion to the time and trouble required in connection with its settlement.

H. McInnes, for plaintiff.

W. B. A. Ritchie, Q.C., for defendant.

RITCHIE, J. }
In Chambers.]

[April 14.

IN RE MOORE.

Collection Act of 1894—Committal by Commissioner under—Jurisdiction—Release of party committed—Terms imposed.

One Moore was committed to jail by a Commissioner of the Supreme Court, acting under the provisions of the Collection Act, 1894, c. 4, and now applied for his discharge under R.S. (5th series), c. 117.

Held, that the jurisdiction of the Commissioner must appear on the face of the warrant.

Held, also, that the Commissioner had jurisdiction in two cases only, viz : (a) when the judgment was for a debt, and (b) where it was for a wilful or malicious breach of contract, or for a tort.

Held, also, that the warrant was insufficient, the ground stated being merely that the "said debtor contracted said debt without having at the time any reasonable expectation of being able to pay the same," instead of alleging that the judgment was for a debt due from the said H.C.M. to the plaintiffs, and that the debtor contracted said debt without having at the time any reasonable expectation, etc.

Held, also, that the contention that the warrant was in the words of the form could not prevail, as the form must vary to suit the circumstances of each particular case, and the expression "said debt," as used, could not be construed to mean the judgment just previously mentioned, which would include damages, the distinction being clearly drawn by s. 9, which was the only authority for the issuing of the warrant.

Held, also, that under R.S. c. 117, s. 10, in giving relief from the im-