

Chan.]

NOTES OF CASES.

Cham.]

to pay, applied by petition on an order that the solicitor should repay this amount with costs.

The Court [PROUDFOOT, J.] under the circumstances made the order asked, although no taxation of the costs as between the solicitor and his client had been had, and it was denied that any arrangement existed that the solicitor should only be paid such costs as the administrator might be allowed against the estate, that any privity existed between the solicitors and the executors, and a bill filed by the executors against the administrator and his solicitor had as against the latter been dismissed with costs on the ground of such want of privity, such dismissal, not having been on the merits, could not be claimed to be *res judicata*. *Crooks v. Crooks*, 1 Gr. 57, remarked upon and followed.

Proudfoot, J.]

[Nov. 16.]

BOARD OF EDUCATION OF NAPANEE V. MUNICIPAL CORPORATION OF NAPANEE.

School Trustees—Requisition for money to build school-house—Mandamus.

By the R.S.O., chap. 114, sec. 461, s. s. 6; ch. 204, s. 104, s.s. 10; and ch. 205, sec. 39, s.s. 4, 5, 6, 7, and secs. 29, 30, 31, a Municipal Corporation has not any discretion to accept or reject the requisition of school trustees for money to be expended in the purchase of a site for, and the construction of a public school; their duty is simply to comply therewith.

Where the Corporation refuses or neglects to comply with such a requisition they may apply to this Division of the High Court for a mandamus for the purpose of compelling the Corporation to provide the money. But in such a case the proper course it would seem is to proceed by a mandamus *nisi*, as the Corporation might be able to show that a mandamus absolute ought not to issue.

CHAMBERS.

Mr. Dalton.]]

[November 20.]

BANK OF HAMILTON V. BROWNLEE & Co.

Service—Partnership—Rule 40.

Brownlee, Brown and O. carried on business in partnership under the name of Brownlee &

Co.; Brownlee absconded and the business continued some time when O assigned his interest to Brown.

Held, that the service of a writ against the firm, in the firm name, upon O., after the assignment to Brown, but before the same was made public, was regular.

Proudfoot, J.]

[Oct. 10.]

RE DEVITT.

Jurisdiction of Master in Chambers in part of subject matter—Confirmation of order as to part without—Rule 424—Practice.

A motion by petition for the sale of infants estate and for the application and distribution of the proceeds.

MR. STEPHENS made the order subject to confirmation by a judge in Chambers so far as it exceeded his jurisdiction. PROUDFOOT, J., confirmed the order, holding that the Official Referee in Chambers should continue to exercise the jurisdiction formerly vested in him in such matters, subject only to the confirmation of so much of his order as directed the distribution and payment out of Court of the moneys to be realized.

H. Cassels, for the applicant.

Proudfoot, J.]

[Nov. 17.]

DALE V. HALL.

Production—Rule 222.

See a full report of this case *post* p. 456.

Proudfoot, J.]

[Nov. 18.]

RE WILSON.

LLOYD V. TICHBOURNE.

Administration order—Right of infants.

This was an application for an administration of the estate of Daniel Wilson, deceased, by Mary Wilson, now Lloyd, his widow, and his seven infant children, by their next friend.

The testator died in 1876, leaving his property to his wife and children, as stated in his will, and appointed the defendant one of his executors.

The defendant is now the sole executor under the probate, and the debts of the testator ap-