

Prac.]

NOTES OF CANADIAN CASES—FLOTSAM AND JETSAM.

Boyd, C.]

RE DUMBRILL.

[Feb. 4.]

*Lunacy petition—Husband and wife—Creditors—Costs.*

A petition was presented by the husband of D. to declare his wife a lunatic which was opposed by her. Pending the hearing of the petition D. assigned her separate estate for the benefit of her creditors. The Court dismissed the petition.

Upon application by D.'s solicitor for an order for payment of his costs between solicitor and client by the assignee in priority to creditors claims,

*Held*, that the costs are to be classed as necessaries which the wife is liable to pay out of her separate estate and for which that estate is liable in the hands of her assignee.

The rule that provision should be made for maintenance out of the insolvent estate of a lunatic does not apply to these costs because the estate is not being administered in lunacy and because these costs cannot be put on the footing of maintenance. The costs should be paid ratably out of the assets, and costs subsequent to the assignment should not rank in competition with creditors before the assignment.

*Lefroy*, for the motion.

*Shepley*, contra.

RYAN V. FISH ET AL.

*Striking out pleas in statement of defence—Reference as to damages without trial of issues on record—Jurisdiction of Master—O. J. A., secs. 47 and 48.*

In an action for damages for detention of dower, defendants pleaded: (1) that the lands in question were wild, and plaintiff not entitled to sum obtained for damages, if any; (2) that plaintiff had assigned her claim for damages; (3) set-off for money expended in respect of said lands; (4) that they did not detain, but were always willing, etc.

On a motion in Chambers, after issue joined, for an order directing a reference as to the damages, under sec. 47 O. J. A., and upon evidence, both for and against the truth of the pleas, the Master made an order striking out second and third pleas and directing a reference.

*Held*, that the Master had no jurisdiction to make the order, and that the issues raised questions that were properly triable only at the hearing.

*Lash*, Q.C., and *T. King*, for plaintiff.

*Hoyles* and *Macnee*, contra.

Cameron, J.]

[Feb. 14.]

SMALL V. LYON.

*Costs—Scale of—Tender—Payment into Court.*

Appeal from the ruling of one of the taxing officers.

The defendant brought into Court with his defence a sum which he pleaded was sufficient to answer the plaintiff's claim, and the Judge at the trial, finding that it was sufficient, directed judgment to be entered for the defendant with costs. *Held* that the Judge at the trial had a discretion to deal with the question of costs, and, having exercised it, the taxing officer had no alternative but to tax to the defendant his full costs incurred, as well before as after the payment into Court.

Appeal dismissed with costs.

*Shepley* for the appeal.

*Aylesworth* Contra.

Rose, J.]

[Feb. 22.]

LEACH V. WILLIAMSON.

*Interpleader issue—Attaching creditors.*

Upon appeal from the order of the Master in Chambers, directing an interpleader issue to be tried between the plaintiff and certain attaching creditors as to the validity of the plaintiff's judgment and execution,

*Held*, that the issue directed was warranted by sec. 10 of R. S. O. c. 54 (the Interpleader Act).

The order appealed from provided for the trial of the question of the validity of the plaintiff's judgment as against creditors generally, and also provided that on the trial of the issue it should be open to the attaching creditors to shew that the plaintiff's judgment was void as against the attaching creditors for fraud, or as being a preference.

*Held*, that these provisions were warranted by sec. 3 of R. S. O. c. 54.

Appeal dismissed with costs.

*Holman*, for the appeal.

*Aylesworth* and *Shepley*, contra.