

Chan. Cham.]

NOTES OF CASES.

[Chan. Cham.]

state of the facts, as they had occurred some years before, but he had remembered them after having a conversation in the beginning of February with his co-defendant.

The Referee refused the application. **BLAKE, V.C.**, dismissed the appeal with costs, without prejudice to any application that might be made before the Chancellor at the hearing.

McPhillips, for defendant.

Hoyles, for plaintiff.

The Referee.]

Blake, V.C.]

WRIGHT V. WAY.

Service of papers.

This case was set down to be heard at Cobourg sittings on 6th April. Notice of examination and hearing was served on solicitors of defendant Honey on 22nd March, at a few minutes past four, who admitted service, but the same day discovering that the notice had been served within fourteen days of the hearing. They wrote to the plaintiff's solicitors repudiating their admission, and saying that they would move to set aside the notice.

The Referee refused to set aside the notice, with costs to be costs in the cause to the plaintiffs in any event.

BLAKE, V.C., dismissed the appeal of the defendant Honey with costs.

McPhillips, for defendant Honey.

Hoyles, for plaintiff.

Proudfoot, V.C.]

DRAGGON V. DRAGGON.

DRAGGON, ABEL V. DRAGGON.

Administration—G. O. 638—Who entitled to.

D. died intestate and one of his creditors served notice of motion for an administration order under G. O. 638 on D.'s widow, the administratrix of estate. The widow then served notice of motion for a similar order upon the heirs of her husband, and filed affidavits alleging a deficiency of the personalty to pay debts that creditors were pressing, that some had taken proceedings to enforce payment of their claims, and also filed a consent of the adult heirs to an order being made in her favour.

The Master at Chatham granted an administration order to the widow.

On appeal, **PROUDFOOT, V.C.**, upheld the Master's order and gave liberty to the creditor to add the costs of his application for administration to any claim he might establish against the estate.

Riordan, for creditor, appellant.

Hoyles, for administratrix, defendant.

Proudfoot, V. C.]

[June 4.]

Re JOHN THOMAS SMITH.

Construction of will—What "capital" and what "profits"—Under bequest to A for life.

By his will, a testator, who at his death owned fifty-four shares of stock in the Consumers' Gas Company, bequeathed among other things as follows:—"I further bequeath to my dear wife, during the term of her natural life, the interest, dividends and profits, which shall or may arise from time to time from the stock or shares which I shall be the holder of or entitled to for my own use at the time of my decease, in the Consumers' Gas Company, of Toronto, The Dominion Bank, and the Ontario Bank, and the dividends, interest and profits, of the moneys or other securities into which the said several stocks may from time to time be changed or converted under the provisions of my will and codicil in that behalf; and I hereby direct my said executors and trustees to pay the said interest, dividends and profits, to my said dear wife Anne, during her natural life accordingly."

Two years after testator's death, the Gas Company issued new stock at par, and notified the executor that there had been allotted to him eighteen shares of said new stock of \$50 each, being in proportion of one to every three of those standing in his name, and that any shares not accepted would be sold by public auction, for the benefit of the parties to whom the same were allotted; and the premium, if any, on the same, placed to their credit.

The executors not having funds to pay for the new stock the shares were sold, and produced a premium of \$226.67.