Divisional Court.] [December 12.

CLOSE v. THE EXCHANGE BANK.

Interpleader—Jurisdiction of Divisional Court—Appeal from order of County Court—Interpleader Act, 44 Vict. cap. 7 (O.)—Marginal Rule 2. O. J. Act.

Upon a writ of execution issued out of this Division to the sheriff of the County of York, a seizure was made of goods which were subsequently claimed by a third party. The sheriff thereupon applied for and obtained an interpleader order upon an affidavit which stated the nature of the goods seized and taken in execution, and that their value was less than four hundred dollars; and the order thereupon directed the issue to be tried in the County Court of the County of York. The issue was tried without a jury and a verdict entered for the plaintiff by the Judge of the County Court. The defendant thereupon appealed to the Divisional Court from the decision of the Judge. No motion was made to strike the cause off the list, but upon the appeal coming on to be argued a preliminary objection was taken by the respondent (plaintiff), that the appeal should have been to the Court of Appeal, and not to this Court, inasmuch as the procedure was governed by the Interpleader Act, under which the interpleader order was made, and this Court had no jurisdiction to entertain the appeal.

Held (1), that Rule 2 of the O. J. Act establishes a code of practice and procedure for all cases of interpleader, whereby interpleading procedure in all branches of the High Court is assimilated, superseding any variant or inconsistent practice theretofore existing; (2) that this Rule 2 is to be so read and applied as to regulate the proceedings in all matters of interpleader, which are to be conducted under R. S. O. cap. 54, as extended by the statute 44 Vict. cap. 7 (O.); (3) That inasmuch as the affidavit filed by the sheriff stated the value of the property seized to be under $400, as well as its nature, it was clearly to be intended that the interpleader order was made under the statute, rather than under the old practice of the former Court of Chancery; (4) That the statute provides that the appeal should be to the Court of Appeal; and that the Divisional Court has no jurisdiction.

Barker v. *Leeson*, 9 P. R. 107, distinguished, and cause struck out; but without costs (following *Wansley* v. *Smallwood*, 10 P. R. 233), as the objection was taken at the hearing for the first time.

Semble, that the jurisdiction of the old Court of Chancery in matters of interpleader is now practically obsolete, being superseded by the remedy provided by statute.

Bain, Q.C., for the appellants.

Shepley, for the respondent.

PRACTICE.

Wilson, C.J.] [October 30.

ALEXANDER v. SCHOOL TRUSTEES OF GLOUCESTER.

Party and party costs—Taxation—Items in bill.

Upon appeal from the taxation of the plaintiff's costs of the action, as against the defendant, by the Deputy Clerk of the Crown at Ottawa;

Held, (1) A fee settling plaintiff's reply to counterclaim should have been allowed.

(2) The costs of a similiter with jury notice were properly disallowed, on the ground that the notice might have been served with one of pleadings.

(3) Instructions for examination of plaintiff, $2, should have been allowed, where the defendants were examining the plaintiff for discovery.

(4) Instructions for examination of defendant by plaintiff, $2, should have been allowed.

(5) Attendance to bespeak copies of plaintiff's and defendants' depositions on examinations for discovery should have been allowed.

(6) The plaintiff was not bound to rely on admissions made by the defendants on their examination for discovery before trial, and therefore, should have been allowed the costs of subpœnaing a witness to prove a fact then admitted.

(7) A fee for attending to hear judgment should have been allowed for each attendance, where judgment was twice deferred by the judge.

(8) The discretion of the taxing officer as to to counsel fee at the trial should not be interfered with.