

Full Court.]

MACPHERSON v. McLEAN.

[Feb. 11.

Defendant's costs on demurrer set against plaintiff's judgment in the action.

Ordered that costs taxed to defendant on judgment on demurrer to an equitable plea be set against the damages and costs recovered by plaintiff in the action and deducted therefrom, plaintiff to issue execution for the balance.

C. E. Duffy for plaintiff. *F. St. J. Bliss* for defendant.

Full Court.]

EX PARTE McELROY.

[Feb. 11.

Summary conviction—Excessive magistrate's costs—Conviction quashed therefor.

Rule absolute to quash a conviction under the Dominion Summary Convictions Act on the ground that the magistrate's costs were excessive.

R. B. Carvell in support of rule. *G. F. Gregory, Q.C.*, contra.

Province of Manitoba.

QUEEN'S BENCH.

Full Court.]

MARSHALL v. MAY.

[Feb. 9.

Evidence—Admission of judgment debtor not admissible as between his creditor and third party—Garnishment—County Courts Act, R.S.M., c. 33, s. 266.

Certain money found on the person of one Gaynor on his arrest on a criminal charge was handed by the constable to John Macdonald, the Deputy Clerk of the Crown, when H. E. May, who had a claim against Gaynor, obtained an assignment of part of the money for his claim. He then sued Gaynor in the County Court and issued a garnishee order attaching the money in Macdonald's hands. The latter then paid the money into court, and May, on obtaining judgment, applied for payment out to him. Marshall & Co. intervened, claiming that the money found on Gaynor was their property and also that it was not attachable in the hands of the officer of the Superior Court as it was not a debt due by him to Gaynor. On the trial of an interpleader issue directed by the County Court judge, in which Marshall & Co. were made plaintiffs and May defendant, the only evidence the plaintiffs gave to show that the money in question was theirs was an admission made by Gaynor to that effect after he had given the assignment to defendant.

The County Court judge found in favor of plaintiff and held that the money was not attachable in Macdonald's hands, set aside the garnishee order and directed payment of the money to Marshall & Co.