

Chan. Div.]

NOTES OF CANADIAN CASES.

[Prac.

argued a motion was made to strike the case out of the list on the ground of maintenance, and it was shown that the defendant, the Rev. J. P. D., did not wish to proceed with this suit, but that as he was pressed to do so by his vestry and churchwardens he allowed his name to be used as appellant upon being indemnified by the latter as to costs.

Per BOYD, C. There was maintenance in the suit, but not in the criminal sense. The vestry and churchwardens have so intermeddled in the litigation that their conduct savours of maintenance. Their claim, if anything is antagonistic to the defendant, the Rev. J. P. D., and not a common interest. The Court should not allow strangers to come in and promote an appeal when the defendant does not wish it.

Per PROUDFOOT, J. The churchwardens cannot be held liable to the objection of maintenance. There were various ways in which the success of the defendant, the Rev. J. P. D., would be beneficial to them, and they believed they had an interest in the result of the action.

H. Cameron, Q.C., Maclellan, Q.C., and Moss, Q.C., for the plaintiffs.

Howland and H. D. Gamble, for defendant Dumoulin.

A. Hoskin, Q.C., for the township rectors.

E. D. Armour, for the defendants, Darling and H. G. Baldwin.

Divisional Court.] [December 23, 1884.

ROSS V. MALONE.

Sale of lands by sheriff before return of fi. fa. goods—Irregularity—43 Geo. III. c. 1—R.S.O. c. 66.

Held (sustaining the judgment of FERGUSON, J.), *Doe dem Spafford v. Brown*, 3 O. S. 95, and *Ontario Bank v. Kirby*, 16 C. P. 35 decided under 43 Geo. III. c. 1 that the issue of an execution against lands before the return of an execution against goods is an irregularity and not a void proceeding, and that that is the law under R. S. O. c. 66, the provision of each Statute seeming to be as nearly equivalent as language can make them without using the same words.

Lount, Q.C., for the plaintiff who appealed.

Pepler, for the defendant Boys.

H. Lennox, for the defendan Giffin.

MASTER'S OFFICE.

Mr. Hodgins, Q.C.] [October

STEWART V. DICK.

Will—Legacy—Charge on real estate.

A testator devised his real estate and chattel property (excepting some specific bequests to his wife) to his son Robert subject to the payment of his just debts, funeral expenses and certain specified legacies.

By a codicil he directed the chattel property (except the specific bequests to his wife) to be sold and the proceeds equally divided amongst all his children.

Held, the specific legacies were a charge on the real estate.

G. H. Watson, for the legatees.

Bain, Q.C., contra.

PRACTICE.

Mr. Hodgins, Q.C.] [November.

CLARK V. UNION FIRE INSURANCE CO.

CHABOT'S CASE.

Production—Foreign commission.

Books and documents produced in an action may, where a proper case is made out, be sent out of the jurisdiction for the purpose of the examination of witnesses before a foreign commission.

But documents produced in another action which is *subjudice* will not be taken from the office for such a purpose.

R. S. Cassels, for the applicant.

W. A. Foster, for the plaintiff.

Mr. Hodgins, Q.C.] [November.

RE QUEEN CITY REFINING CO.

Insolvent company—Winding up—Jurisdiction of judicial officers named in 47 Vict. (D) ch 39—Delegation of their powers.

The Dominion Insolvent Companies' Act, 45 Vict. c. 23, as amended by 47 Vict. c. 39 authorizes the Master in Chambers, the Master in Ordinary, or any local master or referee to exercise the powers conferred upon the Court