

Held, that payments made by them to the payees of promissory notes signed by the testator, with notice that such notes were made without consideration and were intended by the testator as gifts to the payees, were not protected either by the prima facie presumption of a valuable consideration raised by sec. 30 of the Bills of Exchange Act, 53 Vict., c. 33 (D.), nor by the provisions of sec. 31 of R.S.O., c. 110, making it lawful for "executors to pay any debts or claims upon any evidence that they may think sufficient."

Decision of the Surrogate Court of the County of Elgin, 32 C.L.J. 130, reversed upon this point.

J. M. Glenn, for the residuary legatees.

J. B. Davidson, for the executors.

J. A. Harvey, for the payees of the notes.

MEREDITH, C.J., ROSE, J.,
MACMAHON, J. }

FOX v. FOX.

[March 27.]

Jury notice—Striking out—Discretion—Local judge, powers of—Equitable issues.

Although by Rule 1287 (16), the Master in Chambers has no power to strike out a jury notice except for irregularity, a local Judge has jurisdiction, in an action brought in his own county, where the solicitors for all parties reside in such county, by virtue of sec. 185 (5) of the Judicature Act, 1895, to make an order under sec. 114, striking out such a notice as a matter of discretion; and he may do so sitting in Chambers.

And where the issues raised in an action of ejectment were mainly equitable, and it appeared to be a case in which the Judge at the trial would dispense with the jury:

Held, that the local Judge should have exercised his discretion and struck out the jury notice.

Semble, that where there are both legal and equitable issues on the record, in the absence of an order under sec. 114, a party has the right to have the legal issues tried by a jury.

Baldwin v. McGuire, 15 P.R. 305, commented on.

F. A. Anglin, for the plaintiff.

L. G. McCarthy, for the defendant.

ARMOUR, C.J., STREET, J.,
FALCONBRIDGE, J. }

[April 4.]

ANDERSON v. GRAND TRUNK R. W. CO.

Railways—Passenger—Ticket—"Station"—Access to—Expropriation of land—Use of railway lines—Necessity—Invitation—Passenger lawfully upon the railway—Negligence—Passing train—Neglect to give warning—Liability.

A man who had bought a ticket by the defendants' railway from London to Ailsa Craig found that the train which he wished to take had been cancelled; he thereupon took the train to Lucan Crossing, from which point he