

considered on the question of absence of a by-law where there is an executed contract.

Moss, Q.C., and MacMurphy for the plaintiffs.

M. Wilson, Q.C., and Pegley, Q.C., for the defendants.

Practice.

C.P. Div'l Court.]

IN RE ANDERSON v. VANSTONE.

[June 23.]

Arrest—Order to commit—County Court—"Process"—R.S.O., c. 70, s. 1—Habeas corpus.

An order made by the judge of the County Court in Chambers for the commitment to close custody of a party to an action in that court for default of attendance to be re-examined as a judgment debtor, pursuant to a former order, is "process" in an action, within the meaning of the exception in s. 1 of the Habeas Corpus Act, R.S.O., c. 70; and where such a party was confined under such an order, a writ of *habeas corpus* granted upon his complaint was quashed as having been improvidently issued.

Aylesworth, Q.C., for the plaintiffs.

J. P. Mabee for the defendant.

BOYD, C.]

IN RE MCLEOD.

[Oct. 27.]

Executors and administrators—Contention as to grant of administration—Surrogate Court—Removal into High Court—Disqualification of Surrogate judge—Administration quoad—Joint administration.

Upon an application by certain of the next of kin of an intestate, under s. 31 of the Surrogate Courts Act, R.S.O., c. 50, to remove from a Surrogate Court into the High Court a cause in which a contention arose as to the grant of administration, it appeared that the widow and a trust company had petitioned for joint administration of the estate, which was a large one; that the next of kin opposed the petition; that neither widow nor next of kin could unaided supply the necessary security; and that there were no creditors.

Held, that the jurisdiction to award grant, being of a discretionary kind, could be better exercised by the Surrogate judge, and the cause should not be removed.

The personal disqualification of a Surrogate judge to pass upon an application, by reason of his interest as a shareholder in a company applicant, is not a ground for removal to the High Court; for he can call in the aid of a neighbouring County judge.

Where the assets are separable, administration may be granted *quoad*, i.e., to the widow as to one part, and to the next of kin as to another part, or there may be a joint grant to the widow and next of kin.

McCarthy, Q.C., Guthrie, Q.C., W. Cassels, Q.C., W. Davidson, and W. M. Douglas, for the next of kin.

Moss, Q.C., and G. T. Blackstock for the widow and Trusts Corporation of Ontario.