of the debentures and stock. Upon appeal from the report on the grounds that the commission was inadequate, and not in accordance with the principles heretofore acted upon by the Court in these cases, the commission for the petitioner was increased to three and one half per cent. upon the whole of the estate. After a review of the authorities the learned judge said: "I think I may without more express the opinion of which I had scarcely any doubt at the beginning or at the argument that our Courts have adopted a commission or percentage as a means of ascertaining or measuring the amount of the allowance to be awarded to executors, trustees and administrators under the provisions of the statute, and that it is the mode adopted generally when the circumstances of the case are such as to admit of its ready adoption, and that the cases in which a different mode or method has been adopted are to be considered as exceptions to this rule, which should be considered the general rule, the exception in each instance being for some good reason appearing in the case, and I think it sufficiently appears from the cases that the usual percentage or commission allowed is five per cent. upon the amount of the estate got in and paid or over properly applied, and that this in the ordinary case is allowed upon the determination of the trust, although there are exceptions to this last. This rate of five per cent. in the ordinary case seems to be so generally alluded to in the authorities that I think it may be safely said to have been adopted as the general rule in measuring the allowance under the provisions of the statute." He then proceeded to say that looking at the relative amount of work done and services rendered by the petitioner as compared with the co-executor, William Magrath, he considered that of the commission of five per cent. the petitioner was entitled to at least one per cent. more than the half.

S. H. Blake, and *A. H. F. Lefroy*, for the petitioner.

Boswell, for the respondent, William Magrath.

PRACTICE.

Rose, J.] [February 16.

BROWN v. PORTER.

Postponing trial — Costs.

Where a party has made diligent efforts to secure the attendance at the trial of a witness within the jurisdiction of the Court, and has failed to secure it from a cause which he could not control, the costs of an application by such party to postpone the trial should be costs in the cause, unless it was possible to take the evidence before a special examiner, or the knowledge of the fact that the attendance could not be secured came to the applicant in time to enable him to advise the other side, so that the witnesses might be notified not to attend.

Watson, for the plaintiffs.

Lount, Q.C., for defendants.

C. P. Div.] [February 16.

RE BUSHELL v. MOSS.

Prohibition—Division Court—Title to land—Question of fact.

The plaintiff sued in a Division Court for the conversion of a mirror, which, the defendant contended, was annexed to the freehold and passed therewith. The judge of the Division Court found that the mirror was a chattel and gave judgment for the plaintiff.

Held, that the Court could not interfere by way of prohibition.

W. H. P. Clements, for the plaintiff.

Aylesworth, for the defendant.

Chan. Div. Ct.] [February 20.

CANADIAN PACIFIC RY. CO. v. MANION.

Changing place of trial—Ejectment—Rule 254 O. J. A.—R. S. O. ch. 51, sec. 23.

The decision of PROUDFOOT, J., *ante*, p. 70, was affirmed on appeal.

W. H. P. Clements, for the appeal.

Arnoldi, contra.