

arbitrating to fix a renewal rent. The lessors, however, urged on the preliminaries for having arbitrators appointed, and to this the lessee responded by naming an arbitrator under protest so as to save his rights in regard to his contention. The lessors, however, refused to accept this nomination and proceeded to appoint a sole arbitrator, as though the lessee had made no appointment.

Held, that the lessors had no power thus to appoint a sole arbitrator, and injunction granted restraining them from proceeding before such sole arbitrator.

The arbitration might have proceeded in the ordinary form of three arbitrators notwithstanding the protest of the plaintiff, who might in the end have had the benefit of his legal objection.

Delamere, K.C., for plaintiffs. *O'Meara*, for defendants.

Meredith, C.J.] SHANTZ v. TOWN OF BERLIN. [Nov. 17, 1902.
Striking out jury notice—Powers of Judge in Chambers—Action to restrain nuisance.

Motion to strike out a jury notice in an action for an injunction to restrain a nuisance in the shape of a sewage farm, and for damages.

Held, this not being an action, which prior to the Administration of Justice Act, 1873, was cognizable by the Court of Chancery, the jury notice could not be set aside as irregular by the Common Law Procedure Acts. Long prior to the Administration of Justice Act, 1873, the common law courts had power to grant an injunction in a case such as this.

While no doubt a Judge sitting in Chambers has power in the exercise of his discretion to strike out a jury notice in an action such as this, although the party requiring a jury may *prima facie* be entitled to it, the practice is not to exercise that power, but to leave it to be dealt with by the trial Judge.

C. P. Smith, for the defendants. *Du Vernet*, for plaintiffs.

MacMahon, J.] IN RE MCKENZIE. [Nov. 18, 1902.
Will—Construction—Annuities—Creation of fund for—Right to resort to corpus.

The testator by his will made certain specific bequests and devises, and then gave to his executors all the residue of his property, real and personal, in trust to provide means to pay the expenses of administration, to pay debts, and to pay the bequests thereafter made, with power to the executors to sell lands, etc., "to deposit with interest, lend on security of mortgages, or invest in the Dominion funds, any balance that may be on hand at any time, to form a fund to keep up the yearly payments to my sisters . . . namely, to pay to each one of my sisters . . . \$250 a year,