

scale was made as contended by the plaintiff, but reduced the amount by \$20 for some logs not received by defendant.

*Held*, on an appeal from a taxing officer that the plaintiff was only entitled to County Court costs and the defendant was entitled to a set off. *Brown v. Hose* (1890) 14 P.R. 3, distinguished. Judgment of the taxing officer affirmed.

*S. B. Woods*, for appeal. *Gamble*, contra.

Street, J., Britton, J.] WHITESELL *v.* REECE. [Feb. 28.

*Waste—Charge of annuity—Life tenant and remainderman—Apportionment—Damages.*

A testator seized in fee of land, subject to a mortgage, to secure an annuity for his wife, devised the land to one for life remainder over in fee. After his death, the life tenant paid the annuity to the widow. She also sold the timber on the land, and the purchaser having begun to cut the timber this action was begun by the remainderman to restrain waste. The defendant, the life-tenant, claimed that she was entitled to be subrogated to the rights of the mortgagee in respect to so much of the annuity as she had paid, and that being so subrogated, the land was an insufficient security for her claim, and that she therefore had a right to cut down the timber.

*Held*, following *Yates v. Yates*, 28 Beav. 637, that the periodical payments of the annuity must be treated partly as interest which the tenant for life had to pay, and partly as principal for which she would have a charge on the inheritance, in the proportion which the value of the life estate bore to the value of the reversion.

*Held*, also, that on the evidence, the land was adequate security for the claim of the life-tenant against it in that regard, and that the purchaser of the timber having purchased in good faith, an injunction could not be granted, but the life tenant was liable for damages in respect of the timber cut.

*J. A. Robinson*, for defendants. *Donahue*, K.C., for plaintiffs.

Meredith, C.J.C.P.] SMERLING *v.* KENNEDY. [Mar. 2.

*Security for costs—Præcipe order—Waiver.*

Where it is stated in the writ of summons that the plaintiff resides out of the jurisdiction the defendant may, even after delivering his defence, obtain the usual præcipe order for security for costs.

*Proudfoot*, K.C., for plaintiff. *J. H. Moss*, for defendant.