

[Prac.]

NOTES OF CANADIAN CASES.

[Prac.]

PRACTICE.

RE REDDAN.

"The Devolution of Estates Act, 1886," 49 Vict. c. 22 (O.)—Rights of widow of intestate deceased—Release of dower—One third absolutely.

R. died intestate, entitled to real and personal property, leaving a widow and children.

Held, that the widow having elected to take her interest under section 4 of "The Devolution of Estates Act, 1886," 49 Vict. c. 22 (O.), was entitled to one third of the real estate absolutely.

F. Hoskin, Q.C., for the infants.

Huson Murray, for the widow.

E. T. Malone, for the inspector on behalf of a lunatic son.

Proudfoot, J.]

[Jan. 13.]

TEMPERANCE COLONIZATION SOCIETY V.
EVANS ET AL.

Jury notice—Exclusive jurisdiction of equity—Judicature Act, sec. 45—Action for declaration of right to specific performance—Equitable issues between defendants—Misrepresentations—Construction of agreement, statute, and correspondence—Prejudicing the jury—C. L. P. Act, sec. 255.

The action was brought (1) for the recovery of instalments under a scrip contract, and (2) for a declaration of the plaintiffs' rights to a specific performance of the part of the contract as to settlement duties. The time for the performance of the settlement duties had not arrived, but the defendants denied any right in the plaintiffs upon the contract at all, and the consequence of the non-performance it was shown would be not only to prevent the plaintiffs from getting a rebate in price, but under the terms of the contract with the Dominion Government might result in the forfeiture of the whole agreement.

Held, that the plaintiffs, if they established their case, would be entitled to a declaration of the liability of the defendants to perform the contract, and that the (2) cause of action was not one that could be answered in pecu-

niary damages, or upon which there would have been before the Judicature Act any adequate remedy at law, and a jury notice was therefore improper under section 45, and should be struck out.

Held, also, that the circumstance that equitable issues were raised between the defendants was also a ground for striking out the jury notice.

One of the defences relied upon was the falsity of representations in the prospectus, and whether or not the representations were false depended in part upon the construction of the agreement between the plaintiffs and the Dominion Government, and of the Public Lands Act, 1879, and of the nature and effect of a correspondence between the plaintiffs and the government.

Held, that the question whether there were any and what statements in the prospectus that amounted to a representation the falsity of which would afford a defence, and the determination of the fact of the falsity were matters, if not exclusively for the judge, at least more proper for the consideration of a judge than a jury.

But even assuming that all the grounds of action would have been of common law cognizance, a judge has power under section 255 of the C. L. P. Act to direct the action to be tried without a jury, and it is a reason for such direction that by acts of persons other than the defendants, but of which the defendants may get the benefit, the plaintiffs may be prejudiced before a jury.

A. H. Marsh, for the plaintiffs.

Hoyles, for the defendants.