

It is no answer to such a motion that the judgment creditor could make the amount of his judgment out of the defendants, by the sale under common law process of other property of the defendant, than that sought to be reached by the appointment of a receiver.

E. H. Britton, for the plaintiff.

A. H. Marsh, for the defendant.

Boyd, C.]

[Mar. 19.

HURST v. BARBER.

Discovery—Rule 235—Preliminary issue.

In an action against the defendants, as executors and residuary legatees under a will, for a declaration that the will should not be admitted to probate on the ground that it was altered after execution, and for administration and partition.

Held, that the case came within Rule 235, and until the plaintiffs established the alteration charged, they were not entitled to discovery of instruments affecting the estate of the testator.

Rose, J.]

[Mar. 22.

MCKAY v. ATHERTON.

Judgment debtor—Committal for unsatisfactory answers.

The defendant, a widow, upon her examination as a judgment debtor, admitted having lent her brother \$300, and having in her house at the time of the execution \$100, which she refused to hand over to apply on the judgment, because she had no other property with which to support herself and three children.

The judge, to whom an application to commit the defendant for unsatisfactory answers was made, held that the facts of the case did not bring it within the decisions in *Metropolitan L. and S. Co. v. Mara*, 3 P. R. 355, and *Crooks v. Stroud*, 10 P. R. 131, and without laying down any will, declined, in the exercise of his discretion, to order a committal without further information than was afforded by the examination.

J. B. Clarke, for the plaintiff.

No one for the defendant.

Boyd, C.]

[Mar. 19.

ADAMSON v. ADAMSON.

Jury notice—Equitable issues—C. L. P. Act, s. 257—Disagreement of jury—New trial.

Where equitable issues are raised, a jury is not of right but of grace under s. 257 of the C. L. P. Act.

And where in an action brought under an order of the court made in a former action to try the plaintiff's right as against the now defendants to the possession of certain land recovered in that action, equitable issues were raised, and the case had been once tried before a jury, who had disagreed.

Held, that an order striking out the jury notice was properly made.

Ferguson, J.]

[Mar. 20.

PEARSON v. ESSERY.

Contempt of Court—Attachment—Judgment debtor—Married woman—Judgment for costs.

Held, that the defendant was liable to committal for contempt in not attending to be examined as a judgment debtor, although she was a married woman, and the judgment was one for costs. Her imprisonment under such committal, would not be an imprisonment for non-payment of costs.

F. E. Hodgins, for plaintiff.

No one contra.

Osler, J. A.]

[April 5.

ARCHER v. SEVERN.

Security—Appeal to Supreme Court of Canada—Amount—R. S. C. c. 135, s. 46.

The court has no discretion to increase the amount of security on appeal to the Supreme Court of Canada, fixed by R. S. C. c. 135, s. 46, at \$500, because of the number of respondents, or for any other reason.

H. Cassels, for the appellants.

Snelling, Walter Barwick, and W. M. Douglas, for the respondents.