

[Prac.]

NOTES OF CANADIAN CASES.

[Prac.]

paper published a new paper, called *The Traveller*, and used the list to send copies of his paper to some of the names contained therein. It was shown in evidence that while the defendant was in the employ of the company he often used the word "Traveller" as designating the paper then known as *The Commercial Traveller*. In an action to restrain the defendant from infringing the plaintiff's trade mark, it was

Held, that the title of the paper published by the defendant was an infringement of the trade mark of the plaintiff, and that the subsequent publication by the defendant of a newspaper under the name of *The Traveller* was calculated to mislead persons and induce them to believe the plaintiff's paper was the paper referred to.

Held, also, that although the 4th section of the Trade Mark and Design Act of 1879, 42 Vict. c. 22 (D.), requires registration of the trade mark before the proprietor can bring an action, and the 14th section provides for registration of an assignment, still the latter section does not enact that registration shall be necessary to give effect to such assignment.

An injunction was therefore granted.

Foy, Q.C., for the plaintiff.

Morson, for the defendant.

PRACTICE.

Proudfoot, J.]

[April 12.]

MOORE V. MOORE ET AL.

Dower—Pleading and practice—Ont. Jud. Act—Dower Procedure Act.

The writ of summons was indorsed under the O. J. A. with a claim for dower and arrears of dower. The defendants entered an appearance, but added to it an acknowledgment of the plaintiff's right to dower, and a consent to her taking proceedings to have the same assigned to her under the Dower Procedure Act, R. S. O. ch. 55. The plaintiff delivered a statement of claim, taking no notice in it of the acknowledgment and consent, and claiming dower and arrears.

Held, that it was necessary for the plaintiff to deliver a statement of claim in order to re-

cover her dower, and she could not, having elected to institute proceedings under the O. J. A., be compelled to take any steps under the Dower Act.

Hoyles, for the plaintiff.

Rae and Holman, for the defendants.

Boyd, C.]

[May 5.]

THOMPSON V. FAIRBAIRN ET AL.

Executors' compensation—Administration order—Responsibility of executors—Charging executors with interest.

Executors claimed compensation in respect of collections amounting to \$29,000, and of disbursements amounting to \$5,000. All the work of collecting and paying over was done after an order for administration had been made, and was done under the advice of solicitors, and in the more important matters under the direction of the Master. An item introduced on each side of the account was a transfer of mortgage to the plaintiff amounting to \$4,684.47, which was carried out in pursuance of an arrangement made by the solicitors and sanctioned by the Master. It also appeared that the plaintiff's solicitor collected and handed over to the executors \$2,400, and also made a payment to them of \$10,000 for which he was personally liable.

Held, that although the administration order did not put an end to the functions of the executors, yet it greatly diminished their responsibility, and it did so in this case to an almost vanishing point; and the compensation was reduced to \$440, nothing being allowed in respect of the item of \$4,684.47, one per cent. in respect of the items of \$2,400 and \$10,000, two and a half per cent. on the balance of the collections, and five per cent. on the disbursements except the transfer.

The executors retained in their hands a sum of \$1,100 to meet claims against the estate, and were not called upon to pay it into Court.

Held, that the amount retained was not unreasonable, and that the executors were not chargeable with interest in respect of it.

W. H. C. Kerr, for the plaintiff.

Hoyles, for the executors.