

Full Court.]

DUNBAR v. MCNEIL.

[May 15.

Execution—Irregularity—No return to former execution—Compromise of claim after arrest.

Where on an application to set aside a writ of execution it appeared that a previous execution had been issued in the same matter, and that defendant had been arrested thereunder, but that no return had been made thereto,

Held, allowing defendant's appeal with costs, that the execution moved against was irregularly issued, and that there was clear ground for setting it aside.

It appeared that, after defendant's arrest, steps were taken to secure his discharge under the Act for the relief of indigent debtors; but before the examination took place a compromise was arranged between the agent of plaintiff's solicitor and defendant's solicitor, by which defendant was allowed his liberty on giving promissory notes for the sum of \$300, payable in three, nine, twelve and eighteen months, and that, prior to the issue of the execution sought to be set aside, the sum of \$150 had been received by plaintiff's solicitor from defendant's solicitor on account of these notes. Plaintiff's solicitor denied that he had authorized the making of the compromise or the acceptance of the notes.

Held, that the acceptance of the \$150 paid to him seven months after defendant was arrested, with knowledge that he was no longer under arrest, was strong evidence of consent.

Held, also, that the statement in his affidavit that, "from the time the execution was issued in 1888 until a few weeks ago, I was not aware that the defendant was able to respond the said judgment, or I would have endeavoured to enforce payment of it," was inconsistent with the belief that defendant was being held under execution.

D. McNeil, in support of appeal. *F. T. Congdon*, contra.

Full Court.]

FISHER v. COOK.

[May 15.

Teacher in common schools—Salary attachable for debt—Equitable execution—Discretion of judge—Smallness of amount not sufficient ground for interfering—Chose in action—Right of assignee to sue in his own name.

Under the provisions of the Public Instruction Act of 1895, c. 1, s. 37, the sum of money specified therein is paid by the Government of the province to teachers employed in the public schools, in proportion to the number of days taught. By s. 39, the distribution of the money so appropriated is made semi-annually through the inspectors of schools.

Plaintiff, who had obtained an assignment from defendant under the provisions of the Collections Act, subsequently applied to a judge at Chambers for and obtained an order for the appointment of a receiver, for