answer to plead, as was done in that case, that the defendants' testatrix was only an executrix *de son tort*, and that defendants had no notice that their testatrix had ever rendered herself liable to be charged, in the matter in question, as executrix *de son tort*. The action was on an agreement by the intestate or *quasi*-testator to take a house and furniture of plaintiff and to keep same in good repair and deliver same up; alleging entry on the premises after the death of the original contractor by the alleged executrix *de son tort*, and breaches, both by the original contractor and the executrix *de son tort*. The defendant, the rightful executor of the executrix *de son tort*, pleaded such a plea as above indicated, and it was held to be a good answer to the action; the *ratio decidendi* is indicated by the following passages in the judgment of Kelly, C.B.:—"The executor of an executor may be presumed to have assets until he has pleaded a plea of *plene administravit*. But the case of an executor *de son tort* is quite different. He has no power to possess himself of effects of the original testator, for to them the executor *de son tort* had no title. So that *primâ facie* there is no reason for saying that the executor of such an executor *de son tort* is liable for the debts of the original testator The statute 30 Car. 2 was passed to remedy the evil of the executor of such an executor not being liable for *devastavits*. But here *there was no allegation of a devastavit*, and as the statute did not apply, the defendant's plea that his testatrix was only executrix *de son tort* was good."—*Solicitor's Journal.*

CANADA REPORTS.

ONTARIO.

COMMON LAW CHAMBERS.

(Reported by Henry O'Brien, Esq., *Barrister-at-Law.)*

Ross v. McLay.

Notice of trial before issue—Issue book, service of.

Held, following *Ginger* v. *Pycroft*, 5 D. & L. 554, that a notice of trial given before issue joined, except under Reg. Gen. Pr. No. 36, is irregular, and, following *McBean* v. *Duffy*, 4 P. R. 338, that the issue book must be delivered before or with the notice of trial.

[Chambers, May 13th, 1872.—*Mr. Dalton.*]

O'Brien obtained a summons to set aside the issue, issue book, and notice of trial on the grounds (1) that the notice of trial was given before issue joined and before plea pleaded, and (2) that it was given before the issue book was served. It appeared from the affidavits filed that cross-actions of libel were pending between these parties, in both of which the writs were issued on the 18th April, and the declaration filed on the 30th April, 1872. Tuesday, the 7th May, being the last day for pleading, the plaintiff in this case served a notice of trial for the Walkerton Assizes to commence on the 14th May; but defendant not pleading until the morning of Wednesday, May 8th, issue could not be joined, or the issue book made up until that day.

Luton (*Paterson, Bain & Paterson*) shewed cause:—The defendant's time for pleading expired on the 7th, which was also the last day on which notice of trial could be given for the Walkerton Assizes; and the delay in joining issue and serving the issue book was occasioned by his withholding his plea until the next morning. The Court will not suffer him to profit by his own wrong, or give effect to his subterfuge by setting aside the proceedings: *Farrell* v. *Fagan*, 11 Ir. L. Rep. 76. It has been decided that in such a case the plaintiff may give notice of trial at his own risk: *Lowry* v. *Robinson*, 11 Ir. L. Rep. 57; *Lindsay* v. *Dowling*, Ib. 59. As to the service of notice of trial before issue book, in *Carruthers* v. *Rykert et al.*, 7 U. C. L. J. 184, Chief Justice Robinson held that a notice of trial is not irregular, although the issue book is not delivered until the following day.

O'Brien, contra: — The defendant has been guilty of no subterfuge, for the declaration in each of the cross-actions having been filed on the same day, he could have gone to trial as well as the plaintiff, and it is exceedingly desirable that both these cases should be tried at the same time. The plaintiff, however, has proceeded under a mistaken notion as to the practice. Except under the circumstances mentioned in Reg. Gen. Pr. 36, notice of trial cannot be given before issue joined: *Ginger* v. *Pycroft*, 5 D. & L. 554. The rule of court does not apply here. The case of *Carruthers* v. *Rykert*, has been overruled by *McBean* v. *Duffy*, 4 P. R. 338, following *Reeves* v. *Eppes*, 16 C. P. 137; and the practice is now settled that the issue book should be delivered before or with the notice of trial. He referred also to *Riach et al.* v. *Hall*, 11 U. C. R. 356, and *Young et al.* v. *Laird*, 2 P. R. 16.

Mr. Dalton.—A perusal of the Irish cases which have been cited shews that the practice there differs materially from ours, which on this point is well settled. The defendant has taken no advantage to which he is not legally entitled. The only question for me is whether issue was joined before the notice was served. It appears it was not; and as the case does not come within the rule of court, I must make the order asked—costs to be costs to defendant in any event.

QUIETING TITLES ACT.

(Reported for the Canada Law Journal by Thomas Langton, M.A., *Student-at-Law.)*

Re Street.

Quieting Titles Act—Evidence of Possession and Deeds—Notice to persons in possession.

To complete the chain of the paper title to the land in respect to which a certificate of title was prayed production or proof of a power of attorney from the patentee to one Johnston was required. Search had been made for it without success. Its existence was not sworn to positively by the petitioner and the only evidence of it was an affidavit of one Page, who did not swear that he had ever seen it, and did not state his means of knowledge of its existence.

There were also some suspicious circumstances with regard to a deed executed apparently in pursuance of the power.

The only evidence as to possession was a statement in the