

Prac.]

NOTES OF CANADIAN CASES.

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to stay payment out of Court of the costs of the plaintiff up to the trial, until after the hearing, on further directions in order that the amount found due to the estate by the plaintiff might be set off *pro tanto* against the costs awarded to the plaintiff.

*Held*, that the judgment pronounced at the trial gave the plaintiff and his solicitor a vested right to be paid out of the fund in Court prior to the defendant's equity to ask a set off, and no set-off should be allowed to the prejudice of the solicitor's lien thus arising. A solicitor's lien having been asserted at the bar during the argument, an affidavit proving it was allowed to be put in subsequently, following the suggestion of STRONG, V. C., in *Webb v. McArthur*, 4 Ch. Ch. R.

*Wallace Nesbitt*, for defendant Moffat.

*Ruttan*, for the other defendants.

*Arnoldi*, for the plaintiff.

Boyd, C.]

[Oct. 22.]

#### HOLDEN V. SMITH.

*Settling minutes — Judgment clerk — Rule 416, O. J. A.*

On the 30th June the Chancellor, on the application of the defendant, gave an *ex parte* direction under Rule 416, O. J. A., to have the minutes of a judgment pronounced by him at Chatham settled by one of the judgment clerks at Toronto. The local registrar at Chatham had on the 25th June previously settled the minutes. Subject to the objection of the defendant who then gave notice that he required the minutes to be settled at Toronto, and judgment for the plaintiff, and execution was afterwards issued by him, but these facts were unintentionally, not disclosed to the Chancellor when he gave the direction.

Upon a motion by the plaintiff to set aside the Chancellor's *ex parte* direction and a cross motion by the defendant to have the judgment settled by the Registrar at Toronto.

*Held*, that the entry of judgment did not preclude the party who stated his desire to have the minutes settled at Toronto from afterwards obtaining that reference.

The Court will rather encourage (at all events, for some time), the settling of judgments, such as are not included in the forms, at the head office, because of the well-under-

stood phraseology in use by the two officers whose official function it is to settle the frame and terms of such judgments.

*E. D. Armour*, for the plaintiff.

*Langton*, for the defendant.

Osler, J. A.]

[October 28.]

#### DARLING V. SMITH.

##### *Absconding Debtors' Act—Priorities.*

On the 25th January, 1884, seven warrants of attachment at the instance of different plaintiffs, were issued out of a Division Court against the goods of the defendant, an absconding debtor, and under these warrants the bailiff seized certain goods. Subsequently; and on the same day, a writ of attachment was issued by the plaintiff in this suit against the defendant as an absconding debtor, and the goods seized by the bailiff were delivered up by him to the sheriff, pursuant to section 16 of the Absconding Debtors' Act. Five other Division Court attachments, and one County Court attachment, were afterwards issued. Judgments were recovered by all the attaching creditors, executions were issued in the suits in the Superior and County Courts, and the clerk of the Division Court furnished the sheriff with a certified memorandum of the judgments in that Court by virtue of which each creditor mentioned in it was entitled for the purpose of sharing in the proceeds, to be treated as a plaintiff who had obtained judgment and sued out execution. Pending this suit an order was made for the sale of the goods attached under the writ, and the goods were sold and the proceeds of the sale paid into Court.

Upon a motion for distribution of the moneys in Court, the plaintiffs claimed payment of their costs of suit in priority to all other claims.

It was ordered that the costs of issuing the plaintiffs' writ, and the fees and charges paid to the sheriff for executing it should be paid first out of the fund, because these costs and charges were necessarily incurred in seizing, recovering and preserving the property, and that any fees which had been incurred in the Division Court in issuing the warrants of attachment on the 25th January, and seizing the property and holding it till it was delivered to