

REPORTS AND NOTES OF CASES

Province Ontario.

COURT OF APPEAL.

Quebec.]

[March 24.]

BEAUHARNOIS ELECTION CASE.

BERGERON v. DESPAROIS.

Controverted election—Preliminary objections—Service of petition—Bailiff's return—Cross-examination—Production of documents.

A preliminary objection filed to an election petition was that it had not been properly served. The bailiff's return was that he had served it by leaving a copy "duly certified" with the sitting member. By Art. 56 C.C., a writ or other document is served by giving a copy to the person on whom service is to be effected, certified by the prothonotary, attorney or sheriff, and it was claimed that the return in this case should have shown by whom the copy was certified. On the hearing the counsel for the sitting member wished to cross-examine the bailiff as to the contents of the copy, without producing it, but was not allowed to do so.

Held, that the bailiff's return was good. Art. 78 C.C., only requires a return that he had served a copy, and the words "duly certified" were superfluous.

Held, also, that counsel could not cross-examine the bailiff as to the contents of the copy served without producing it or laying a foundation for secondary evidence.

Appeal dismissed with costs.

Foran, Q.C., and *Ferguson*, Q.C., for appellant.

Choquet, for respondent.

Practice.]

[April 27.]

SMITH v. MASON.

Costs—Infants—Next friend—Costs out of estate or shares.

The plaintiffs, infants suing by a next friend, claimed against their father and the executors of a will a forfeiture by their father of his share of the testator's estate, and that they had become entitled to it. The action was occasioned by facts which, if they occurred, were done by the legatee after the testator's death. The action was successful in the High Court, but was dismissed on appeal to the Court of Appeal.

Held, that the costs should not be made payable out of the testator's estate, nor out of the share of the infant's father, but should be paid by the next friend, without prejudice to his claim for indemnity, out of the shares of the infants whenever they should come into possession.

In general a next friend is in the same position as any other litigant, and receives or pays costs personally as between himself and the defendants.

Foy, Q.C., for the appellants, the executors.

Ritchie, Q.C., for the plaintiffs.

Moss, Q.C., for the defendant, J. C. Smith.