

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

REYNOLDS V. ROXBURGH.

*Hiring chattel for reward—Implied warranty.**Held*, that the hirer out of a chattel for reward impliedly warrants its fitness for purpose hired.*Nesbitt*, for motion.*Dumble*, contra.

LEGACY V. FITCHER.

*Venue—Abolition of, by O. J. Act.**Held*, that local venue is abolished by the Ontario Judicature Act.*V. McKenzie*, Q.C., for motion.*G. T. Blackstock*, contra.

REGINA V. FEARMAN.

Larceny—43 Vict. c. 28, s. 66—Conviction.

The prisoner was indicted for larceny under the Indian Act, 1880, section 66, and was convicted.

Held, WILSON, C.J., dissenting, that he ought not to have been convicted, because, *per* ARMOUR, J., the wood, the subject of the alleged larceny, was not "seized and detained as subject to forfeiture"; and because, *per* O'CONNOR, J., the affidavit required by section 64 had not been made, and was a condition precedent to a seizure.*Per* WILSON, C.J., that he was properly convicted.*Johnson*, for the Crown.*McKenzie*, Q.C., contra.

CHANCERY DIVISION.

Ferguson, J.]

[February 15.]

RE FLEMING.

Executor—Compensation—Commission—R. S. O. c. 107, s. 36-40.

This was a petition by an executor of the will of Charles Magrath, deceased, asking the Court to fix a fair and reasonable allowance for his care, pains and trouble and time expended as executor in and about the estate of the said Charles Magrath. A reference was accordingly made to the Master in Ordinary to

fix the amount of compensation, under R. S. O. chap. 107, sec. 36-40. Evidence was taken in his office, from which it appeared that Charles Magrath died in the month of May, 1884, leaving a will by which he made William Magrath sole legatee and devisee of the whole of his property, with the exception of an annuity of \$400, payable to his widow. He added, however, the following words after the general bequest to William Magrath, "I commend to his care my said dear wife, and that, notwithstanding the above bequest, that in as far as in him lies he shall see that she does not want for all reasonable maintenance and comforts becoming her station in life." And he appointed the present petitioner and W. Magrath executors of his will. The evidence further shewed that the estate of which Charles Magrath died possessed amounted to between \$115,000 and \$120,000, of personalty consisting of some \$32,000 on deposit in a bank, and of a number of debentures and stock of various descriptions, a great many of which were payable to bearer. The evidence further shewed that the actual labour involved in connection with the estate, which, under any circumstances, did not seem to have been very great, was done by the solicitor of Mr. William Magrath, acting also for the present petitioner in the matter, and that the present petitioner did such acts as were required by way of conformity, such as signing checks when required and doing formal acts required, first, to put the estate in his name and in the name of his co-executor, and then transfer it to Mr. William Magrath solely; but the petitioner appeared to have relied implicitly on the advice of the said solicitor in what he did. Mr. William Magrath himself lived away from Toronto where the work was done, and where the deceased died, and consequently what there was for the executor to do was mainly done by the petitioner, who also exerted himself to procure an additional sum for the widow in furtherance of the wishes of the testator expressed in the words quoted above. The Master in Ordinary allowed as commission two and one half per cent. upon the \$32,000 on deposit in the bank, which, it appeared, had been paid out on the cheque of the executors to various persons to whom the said solicitor had loaned it upon mortgage of real estate, and he allowed a commission of one per cent. upon the amount