

Chancery.]

NOTES OF CASES—HEALEY V. CAREY.

[Div. Ct.]

large from travelling on and over the said line * * and have refused and still refuse to open the said line or to allow the plaintiffs to do so," and that the defendants claimed they were entitled to the road.

Held, on demurrer for want of equity, that the allegations taken together were sufficient to entitle the plaintiffs to the relief; although had the only allegation been that the defendants had "fenced or allowed the same to be fenced," it would not have entitled the plaintiffs to the injunction prayed for.

MacLennan, Q.C., for demurrer.

A. Hoskin, contra.

RE HARRIS—HARRIS V. HARRIS.

BLAKE, V.C.]

[March 6,

Costs of contentious suits in Surrogate Court.

Where a suit in the Surrogate Court is by order removed into Chancery, and that Court directs any of the parties to receive their costs; the costs to which they are entitled are those fixed by the Court of Chancery tariff—not the costs of the Probate Court in England, or of the County Courts here; no tariff of costs for contentious cases in the Surrogate Courts here having yet been established.

R. M. Meredith for the plaintiff.

Geo. Murray for defendants.

BOLKOW V. FOSTER.

PROUDFOOT, V.C.]

[March 14.

Pleading—Parties.

Held, that to a bill by a surviving partner to foreclose the equity of redemption of defendants in railway mortgage bonds and shares, the mortgage of the bonds and shares being in favor of the partnership firm, the personal representatives of the deceased partner are not necessary parties; in this over-ruling *Sykes v. Brockville & Ottawa Railway Co.*, 9 Gr. 9 (1862).

Crooks, Q.C., *Smith* and *Rae* for plaintiff,
Bethune, Q.C., *Boyd*, Q.C., and *W. Cassels* for defendants.

COCHRANE V. FRANKLIN.

CHANCELLOR.]

[March 16.

Fi. fa. against mortgagee—Restraining disposition of mortgage.

On a bill filed by a judgment creditor with *fi. fa.* in hands of sheriff, the Court restrained the defendants from selling, assigning, or otherwise disposing of a mortgage held by him, created by one T. in favor of one S., and by S. assigned to the defendant. For the purpose

of obtaining a *lis pendens*, the plaintiff was entitled to proceed in equity, notwithstanding the provisions of the Administration of Justice Act.

[In future, however, this will not be the case, as during the last session power was given to the Common Law Courts to grant a *lis pendens*].

Moss for plaintiff.

STEWART V. LEES.

CHANCELLOR.]

[March 16.

Proof of execution of will—Attestation clause—Probate.

Where probate of a will is produced at the hearing, in pursuance of notice served under the statute 22 Vict. cap. 93, and the opposite party does not serve notice of an intention to dispute the validity of the alleged devise, the probate will be sufficient evidence of such will and of its validity and contents; but if, the notice to dispute having been served, the will does not appear to have been duly executed, the Court will give liberty to adduce further evidence, by affidavit or otherwise, to shew that the several requisites of the 4 Wm. 4, cap. 1, as to the execution of wills had been complied with.

Fitzgerald, Q.C., for plaintiff.

MacLennan, Q.C., for defendant.

CANADA REPORTS.

ONTARIO.

SEVENTH DIVISION COURT—LEEDS AND GRENVILLE.

HEALY V. CAREY.

The plaintiff, who was collector of the Roman Catholic Separate School tax, for and in the Township of Kitley, having sued the defendant for the amount of a Roman Catholic Separate School tax, the latter admitted that he was a separate school supporter, but contended that he had leased his real estate to his son who was a supporter of public schools, and who, as between defendant and himself was to pay all taxes and had paid the public school tax.

Held, 1. That the defendant was liable.

2. That the action should have been brought in the name of the trustees as a corporation, and an amendment allowed.

[BROCKVILLE, February 6, 1877.]

This cause was tried before the Junior Judge of the County Court of Leeds and Grenville at Frankville on the 16th January, 1876. The action was brought to recover \$8.21, amount due from the defendant as school rates for 1876, embracing the collector's rate for collecting.