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giving notice of trial for a sittings of the Court at which the plaintiff wished to go down, the plaintiff, without waiting for the statement of defence, delivered a joinder of issue and served notice of trial before two o'clock in the afternoon. Before three o'clock the same day the defendants delivered their defence. The defendants were in no default.

Held, that the notice of trial, being delivered before the close of the pleadings, was irregular under Rule 654 and should be set aside.

Broderick v. Broutch, 12 P.R. 301, distinguished.

C. J. Holman for the plaintiff.

C. W. Kerr for the defendant.

[July 4.]

[June 27.]

CONNOLLY v. MURRELL.

Discovery—Privilege—Communications between husband and wife—R.S.O., c. 61, s. 3.—Solicitor withdrawing from examination.

The decision of STREET, J., 14 P.R. 187, was affirmed on appeal to the Divisional Court GALT, C.J., and MACMAHON, J.).

E. R. Cameron for the plaintiff.

Talbot Macbeth for the defendant.

[July 4.]

[June 27.]

SIMPSON v. CHASE.

Attachment of debts—Adjusted insurance moneys Division Court attachment—Appeal to Court of Appeal—Time for giving security—Service of garnishee summons—Local agent of foreign insurance company Defence of garnishee—Notice of rejection—Time—R.S.O., c. 51, ss. 149, 178, 182, 185, 188—Rule 935.

1. Security upon a Division Court appeal may be given by deposit after the ten days' delay allowed by s. 149 of the Division Courts Act, R.S.O., c. 51.

2. Service of a Division Court after judgment garnishee summons upon the local agent of a foreign insurance company, whose powers were limited to receiving and transmitting applications,

Held, effective, having regard to the provisions of ss. 182 and 185, s. 3, of R.S.O., c. 51.

3. Where the defence of the garnishee is put in after the expiration of the eight days from

service of the summons allowed by s. 188, s. 3, of R.S.O., c. 51, so long as it is put in in sufficient time to enable the creditor to give notice rejecting it, and for the clerk to transmit such notice to the garnishee, the latter is not bound to attend the trial if such last mentioned notice is not given, and the creditor cannot proceed to the trial of the action until that is done.

4. A claim under an insurance policy for a loss, the amount of which has been settled and adjusted, is not a debt which can be attached under s. 173 of R.S.O., c. 51; and Con. Rule 935 does not apply to Division Courts.

Semie, even if it did, that such a claim could not be attached so long as the insurance company's right to have the money applied in rebuilding was open.

Aylesworth, Q.C., for the appellants.

C. L. Lewis for the respondent.

[July 3.]

[July 3.]

TURNER v. CROZIER.

Sheriff—Poundage—Allowance in lieu thereof—Rule 1233—Goods seized not those of execution defendant.

Where goods seized by a sheriff under execution were afterwards found not to be the goods of the execution defendant,

Held, that the sheriff was not entitled under Rule 1233 to an allowance in lieu of poundage in respect of the goods seized.

C. D. Scott for the plaintiff.

Aylesworth, Q.C., for the sheriff.

[July 4.]

[July 4.]

MCLEAN v. ALLEN.

Receiver—Right to bring an action in name of person beneficially entitled—Request—Delay.

A receiver appointed, by way of equitable execution, to receive the share of a judgment debtor under a certain will, applied for an order for leave to bring an action in the name of the debtor for construction of the will. The receiver had not requested the debtor to bring the action, and upon the application the latter expressed his willingness to do so and to proceed without unnecessary delay.

Held, that the receiver would have been en-

[July 4.]

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