

ancing Act, R.S.O., 1887, c. 44, s. 53, subs. 10, did not cure the defect.

Where at the time of the vesting order the interests of two of the tenants in common were outstanding on mortgages, in which their wives had joined to bar dower,

Held, that the mortgages having been discharged out of the purchase money, the wives would be entitled to dower on the death of their husbands, notwithstanding the sale and vesting order.

E. D. Armour and Hall for vendor.

J. H. Macdonald, Q.C., for purchaser.

Practice.

MR. DALTON.]

[April 20.

GALT, C. J.]

[May 13.

CLARKE v. CREIGHTON.

Irregularity—No indulgence to plaintiff where action not sustainable—Action for damages for false testimony.

The plaintiff sued for damages for false testimony, alleging that he had failed in a prior action by reason of such testimony given therein by the present defendant.

Held, that the action would not lie, and the plaintiff being in default by reason of not having given notice of trial, the action was dismissed.

S. R. Clarke, plaintiff in person.

C. Millar for defendant.

COURT OF APPEAL.]

[May 14.

FOSTER v. VIEGEL.

Costs—Counter-claim—Scale of costs.

Where the defendant recovers on a counter-claim, the costs should be on the scale of the Court in which the action was brought by the plaintiff.

Irvine v. Brown, 12 P. R., 639, and *Amon v. Bobbett*, 22 Q. B. D., 543, referred to.

Aylesworth for the appellant.

Lash, Q.C., for the respondent.

FERGUSON, J.]

[May 13, 14.

MCNEILL v. HAINES.

Costs—Scale of—Action for cutting timber on land—Title to land—R. S. O., c. 47, s. 18.

The plaintiff sued for damages sustained by the defendant cutting timber on his own land, after having sold such timber standing, to the

plaintiff's assignor. It was determined by the Court that the timber sold was an interest in land.

Held, that the title to land was brought in question in the action, and therefore, although the plaintiff recovered only \$135, a County Court would have no jurisdiction, and the costs should be on the scale of the High Court.

W. M. Douglas for plaintiff.

Lount, Q.C., for defendant.

ROSE J.]

June 7.

SMITH v. WILLIAMSON.

Costs—Action of ejectment by administrator.

A trustee or executor stands in the same position as any other litigant with respect to costs.

And where an action of ejectment was brought by the administrator of a deceased person in whom the legal estate in certain land was vested, and by the hold of a mortgage created by the deceased person upon such land, and it appeared that the deceased purchased the land with the moneys of the defendant, and took the conveyance in his own name, and that the defendant was the true owner of the land,

Held, that the fact that there was no declaration of trust in favor of the defendant, and that the evidence in the hands of the administrator tended to show that the deceased was in his lifetime owner and not trustee, did not relieve the administrator from liability for costs; and costs were given to the defendant against both plaintiffs.

W. N. Miller, Q.C., for the plaintiffs.

Rae for the defendant.

ROSE, J.]

[June 7.

MARKLE v. ROSS.

Masters and referees—Appeals from interlocutory rulings—G. O. Chy. 642—Rules 39, 846, 848 350—Judge in Chambers—Mortgage action—Plea of payment—Onus of proof.

G. O. Chy. 642 provided for an appeal to a Judge in Chambers against any decree, order, report, or other determination of any Master; but this order has been abrogated, and the provisions for appeals from Masters and Referees are now contained in Rules 848-850, in which there is no provision for an appeal from a ruling or certificate, but from a report only.

Held, nevertheless, that a party to any reference has a right to come to the court at any