

Per BOYD, C.—R.S.O., 1887, c. 124, s. 9, applies to cases of execution where the Creditors' Relief Act applies, and did not apply to the writ in this case, which was in the sheriff's hands prior to that Act, and was executed by the sale of the lands and taking of the money, which money then became the property of the execution creditor.

Semble, that if R.S.O., 1887, c. 124, s. 9, is to receive such a construction as would pass the money in this case to the assignee for creditors, thus giving to him a higher right than the execution debtor had, the Act would be *ultra vires* as a bankruptcy provision.

Per FERGUSON, J.—The authorities are clear to show that after receipt of the moneys by the sheriff, the execution was executed: *Semble*, therefore, that completely executed by payment in R.S.O., 1887, c. 124, s. 9, means voluntary or involuntary payment to the sheriff."

Millar for the motion.

T. G. Galt contra.

Practice.

MR. DALTON.]

[June 12.

CLARKE *v.* CREIGHTON.

Costs—Defendant a solicitor—Instructions to another solicitor.

The defendant was himself a solicitor, but retained another solicitor to conduct his defence, and was awarded costs against the plaintiff.

Held, that the defendant was entitled as against the plaintiff to the usual costs of a defendant.

S. R. Clarke, plaintiff in person.

C. Millar for defendant.

FERGUSON, J.]

[June 15.

CAMERON *v.* PHILLIPS.

Administrator ad litem—Order appointing, form of—Rule 311.

In framing an order under Rule 311 appointing an administrator *ad litem* it is not sufficient to say, "it is ordered that A. be, and he is, hereby appointed administrator *ad litem* to the estate of B.;" the order is really a grant of administration, and should contain the particulars mentioned in Rule 48 of the Surrogate Rules; and,

if such is the fact, should also, in view of R.S.O., c. 50, s. 50, state that the administration is of the real and personal estate.

J. B. O'Brien for plaintiff.

FERGUSON, J.]

[June 24.

IN *re* DELANTY.

Infants—Sale of land—Dispensing with examination of imbecile infant.

Upon a petition under R.S.O., c. 137, s. 3, for the sale of lands belonging to three infants, the examination of the eldest, a girl of sixteen, was dispensed with, notwithstanding the provisions of s. 4 of the Act and of Rule 999, upon the ground that she was an imbecile.

Re Lane, 9 P. R. 251, and *re* Harding, 13 P. R. 112, followed.

Hoyles for the mother.

F. W. Harcourt for the infants.

Law Students' Department.

The following papers were set at the Law Society Examination before Easter Term, 1889:

CERTIFICATES OF FITNESS.

REAL PROPERTY AND WILLS.

1. A devisee, since the Devolution of Estates Act, registers the will by delivering a sworn copy to the Registrar. He then offers the land for sale. Can he make a good title on his own conveyance? Why?

2. A will is witnessed by three witnesses (two being sufficient), one of whom is a legatee. What is the effect upon the attestation, and upon his legacy?

3. What is the effect of altering the text of a will after execution? How should a necessary alteration be made so as to place its validity beyond dispute?

4. What are the chief general rules to be observed in construing wills?

5. When can you, and when can you not, have a certificate of *lis pendens* set aside on motion without a trial of the action? Explain fully.

6. When an open contract for the sale of land is made, and it is discovered that there is an incumbrance on the land, what are the purchaser's rights respecting the same? If the