

Chan. Div.]

NOTES OF CASES.

[Chan. Div.]

Boyd, C.]

[Jan. 16.]

IN RE SOLICITORS.

Solicitor and Client—Costs, right to receive—Onus of proof.

C., who was in active practice as a lawyer, had obtained a mortgage on a valuable leasehold estate, and having taken such proceedings as resulted in a forfeiture of the mortgagor's term, procured from the owner of the property a renewal of the lease to himself. The mortgagor instituted proceedings to redeem, but C., feeling that he was absolute owner of the interest, instructed the solicitors to defend the suit. They expressed to C. some doubt as to his right to resist the claim of the mortgagor, whereupon he, with one of the solicitors, went to an eminent real estate counsel, who, being pressed for time, advised them that the suit should be defended. C. drafted his answer, his solicitor adding one clause. Counsel at the hearing told C. he would undoubtedly fail in the litigation, and the usual decree for redemption was pronounced, C. being ordered to pay such costs as had been occasioned by his resisting redemption. It was alleged against the solicitors that they had advised C. that he would be entitled to costs in any event; that they had refused to consider or submit to him an offer to pay the mortgage money and costs, on the ground as they alleged that C. claimed about three times the sum offered; that they had colluded with the mortgagor's solicitor in having proceedings instituted which they had wrongly advised him to defend; and that he had had a good defence but the same had been negligently managed. There was a written retainer which did not express any special arrangement as to costs or the terms on which the defence was to be conducted. The Court being of opinion that C. had failed to make good his charges against the solicitors, affirmed the order made by Spragge, C., reversing the finding of the Taxing Officer that the solicitors were not entitled to recover the costs of the litigation.

S. H. Blake, Q.C., for solicitors.

Boyd, C.]

[Jan. 18.]

RUMOHR V. MARX.

Pleading—Practice—Amended statement of claim—Partial demurrer.

The defendant having filed his statement of defence, the plaintiff replied thereto by amend-

ing his claim, by adding to the statement two new paragraphs which would have been demurrable if pleaded as a reply. The matters thereby set up, when separated from the rest of the statement, did not disclose any distinct cause of action. Thereupon the defendant served an amended statement of defence and demurred to the two paragraphs which had been so added. In view of the fact that the paragraphs which had been so added did not disclose any separate or substantial cause of action, and that the demurrer, however decided, could not advance the cause, the Court (Boyd, C.) over-ruled the demurrer without costs, as it was the first occasion the point had arisen under the Judicature Act.

The propriety of partial demurrers which do not bring up the whole or even a substantial question between the litigants, thus tending to increase costs, considered and remarked upon.

*Moss, Q.C., for plaintiff.**Wm. Douglass, for defendant.*

CHAMBERS.

Boyd, C.]

[Jan. 17.]

LOWSON V. CANADA FARMERS INS. CO.

Leave to appeal from Master's order—Rules 414, 427, 462.

Where an appeal from an order of the Master in Chambers should have been set down on the 29th of December, but owing to an announcement by the Registrar that cases set down for that time would not be heard until the 9th of January following, the case was not set down till the 9th of January.

Held, that rule 414 O. J. A. did not apply and that leave under Rules 427 & 462 O. J. A. must be obtained from the Master in Chambers before the appeal could be heard.

*Cattanach, for the appeal.**H. Cassells, contra.*

Boyd, C.]

[Jan. 16.]

RE DOWLER.

Husband and wife—Administration.

A widow married a second time and then administered to her first husband's estate. She lent moneys received by her as administratrix to her second husband, who died leaving her sur-