

Chan. Div.

NOTES OF CANADIAN CASES.

[Prac.

Held, that the interest should be charged at 6 per cent. yearly, and that the awarding of compound interest is opposed to the spirit of the decision in *Inglis v. Beaty*, 2 A. R. 453, and could only be upheld as being in the nature of a penalty imposed on the executors.

The executors should get costs because the action was not occasioned by their misconduct; but they should not get the costs of such part of the enquiry as was caused by the misapplication of the funds or their failure to make reasonably accurate entries of their dealings with the estate.

The taking of administration proceedings does not deprive them of their functions as executors or even suspend them, and a reasonable allowance should be made for moneys received *pendente lite*.

Hoyles and Ingersoll, for the plaintiff.

Clement and Collier, for the defendants, the executors.

McClive, for the widow.

Boyd, C.]

[October 21.

SNARR V. BADENACH.

Annuity—Interest on—As against assignee in insolvency of covenantor to pay annuity—Repairs—Covenant to keep houses suitable for tenants.

J. S. by his will gave his wife, E. S., an annuity of \$2,000 a year, and charged it on his estate. After his death, E. S., the annuitant, C. E. S. and M. A. S., two daughters, and W. A. S. and G. E. S., two sons, entered into an agreement whereby the annuity was charged on certain real estate and other property, and the sons covenanted to pay it, and the executors of J. S. transferred all their interest as executors in all the estate of J. S. to the said sons, subject to the said charge. W. A. S. and G. E. S. afterwards became insolvent, and B. became assignee in insolvency. The annuity fell into arrear for several years, and E. S. died, having made a will by which she devised all her estate to C. E. S. and M. A. S., the two daughters. C. E. S. and M. A. S. brought an action against B. to have a lien declared on the property for the amount of the arrears of the annuity, which was referred to the Master, who found that they had the right to maintain the action, and settled the amount of the annuity due at \$8,993.95, on which he allowed

interest for the six years preceding action brought at \$1,738.05. On an appeal from the Master's report, it was

Held, that R. S. O. c. 50, ss. 266 and 267, under which the interest was allowed, is not applicable to cases where a recovery is sought, not against a defendant personally, but against his estate and following *Booth v. Coulton*, 2 Giff. 520, except under extraordinary circumstances upon particular grounds suggested of hardship or peculiarity, interest is not to be allowed upon the arrears of an annuity, and in this case no interest should be allowed as against the estate and other creditors. Even if the statute justified the giving of interest as between the parties to the contract the awarding of interest could not be upheld as against the assignee in insolvency—the general rule being that interest ceases at the date of the assignment upon all debts where interest is not made part of the contract, unless it is evident that there is a surplus to be returned to the debtor.

Held, also, that the expense of some flooring, lathing and plastering was properly charged against the defendant, as the sons W. A. S. and G. E. S. had covenanted to keep the house reasonably and sufficiently tenantable and suitable for the occupation of tenants taking the same, and these repairs were made because the tenant threatened to leave.

Held, also, on the evidence in this case, that the Master was right in disallowing a large set-off brought in by the defendant over and above the sum of \$16,000 allowed for reconstructing the buildings.

W. A. Reeve and G. F. Ruttan, for the appeal.
J. C. Hamilton and Allan Cassels, contra.

PRACTICE.

Mr. Dalton, Q.C.]

[Nov. 10.

WALMSLEY V. GRIFFITH ET AL.

Security for costs—Co-defendant—Counter-claim.

A defendant asking relief against his co-defendant will not be ordered to give security for costs.

Semble, such relief should not be asked by way of counter-claim.

J. R. Roaf, for defendant Webster.
Echlin, for defendant Hall.