

*Held*, that the title was put in issue by such denial, and as a County Court would, therefore, have no jurisdiction, the costs should be on the scale of the High Court, although the plaintiff recovered only \$75.

*Held*, also, that the question whether the title was in issue must be determined according to the pleadings and not according to what took place on the trial or reference.

*D. C. Ross*, for the plaintiff.

*E. T. English*, for the defendant.

Armour, C.J.]

[Nov. 13.]

KEAN v. EDWARDS.

*Award—Appeal from—Time—Trinity Term.*

An award must be moved against within the term following its publication, or within the period which such term formerly occupied.

And where an award was published on the 13th August, 1888, notice of appeal dated 7th September, 1888, but not served till 10th September, 1888, was

*Held*, too late, and the appeal dismissed.

*Lash*, Q.C., and *Keen*, for the plaintiff.

*Pepler*, for the defendant.

Court of Appeal.]

[Nov. 13.]

*In re* SMART INFANTS.

*Infants—Custody—Habeas corpus—Petition—Amendment—Con. Rule 444—Appeal—Waiver.*

The order of the Chancery Divisional Court, 12 P. R. 435, affirmed on appeal.

*Held*, that the infants' father had waived his right to appeal from the order directing the filing of a petition by having complied with such order.

*Seemle*, but for the waiver, the appeal of the father must have succeeded; for the power given by Rule 474, Ontario Judicature Act (Con. Rule 444), is to amend any defects or errors, not to compel a litigant to adopt a different form of remedy for one which is in itself competent and regular.

*S. H. Blake*, Q.C., and *H. Cassels*, for the infants' mother.

*J. Macdonnan*, Q.C., and *J. K. Kerr*, Q.C., for the father.

Court of Appeal.]

[Nov. 13.]

BETTS v. GRAND TRUNK RAILWAY CO.

*Discovery—Production of documents—Railway accident—Report and evidence on investigation.*

The decision of the Common Pleas Divisional Court, 12 P. R. 86, affirmed substantially on the same grounds.

*Lyell v. Kennedy*, 27 Ch. D. 1., and *Kyshe v. Holt*, W. N. 1888, p. 128, referred to in addition to the cases cited in the judgment appealed from.

*Oster*, Q.C., for the appellants.

*Robinson*, Q.C., and *Shepley*, for the respondent.

## Law Students' Department.

The following papers were set at the Law Society Examination before Trinity Term, 1888.

### CERTIFICATE OF FITNESS.

#### REAL PROPERTY AND WILLS.

1. A bequest is made of "\$100 each to the three children of A. B." At the time of the testator's death, A. B. has five children. How is the bequest to be construed?

2. How do you construe a devise "to A or his heirs?"

3. A owns three lots of land, which he specifically devises in three parcels to three persons. He has not enough personalty to pay his debts, but he bequeaths it to his executors for payment of his debts? How will the estate be administered, having regard to the Devolution of Estates Act?

4. An execution is in the sheriff's hands against the lands of A. He buys land from B, pays part of the purchase-money, takes a conveyance and gives a mortgage on the land for the balance at the same time. Does the execution take priority over the mortgage? If so, explain how the transaction can be carried out without paying the execution, without giving it priority, and without the intervention of trustees?

5. State the chief characteristics of the present registry law.