

[Prac.]

NOTES OF CANADIAN CASES.

[Prac.]

closure was obtained in chambers against all the defendants, including infants and the lunatic defendant.

Held, that the order appointing the guardian was an erroneous one, for which there was no proper foundation; not a mere irregularity which could be held to be waived by the subsequent steps taken to protect the lunatic's rights.

Held, also, that the term "adult" in G. O. Chy. 645, does not include a lunatic or person of unsound mind; and therefore that a judgment against a lunatic could not be obtained in chambers under G. O. Chy. 434.

The judgment of foreclosure was set aside. *Foy, Q.C., and E. Taylour English*, for the defendant.

J. MacLennan, Q.C., for the plaintiff.

Boyd, C.]

[September 28.]

PIERCE V. PALMER.

Statement of claim, delivery of—Irregularity—Waiver.

Upon the defendant's application to dismiss the action for want of prosecution, an order was made on the 6th May that upon payment by the plaintiff of \$20 costs within eighteen days, and upon his delivering his statement of claim within the same time, the defendant's application was dismissed. On the 26th May after the expiry of the eighteen days, the plaintiff filed his statement of claim, delivered a copy to the defendant's solicitors, and tendered them \$20, which they refused to accept. They also declined to admit service of the statement of claim but retained it in their possession. On the 3rd June an order was made extending for one week the time for filing and delivering the statement of claim and paying the \$20. This order did not provide that the statement of claim already delivered should stand. Within the week the plaintiff paid the \$20, and nine days afterwards signed judgment against the defendant for default of defence, upon the statement of claim delivered on the 26th May.

Held, affirming the decision of the Master in Chambers, that the plaintiff was wrong in filing and serving his statement of claim before paying the costs; but this irregularity was

waived and the service became effective when the costs were afterwards received, they being paid under the order of the 3rd June.

Hoyles, for the plaintiff.

C. F. Holman, for the defendant.

Proudfoot, J.]

[October 3.]

REID V. MURPHY.

Interpleader—Sale of goods—Sheriff's charges.

By an order made upon an interpleader application a sheriff was directed to sell the goods in question and pay the proceeds into court, less his possession money and expenses of seizure and sale. The sheriff did so; the interpleader issue was tried and resulted in favour of the claimant. An order was then made in chambers directing that the sheriff should pay into court the amount retained by him under the previous order, and that the execution creditor should pay the sheriff his proper charges for possession money, etc.

Held, that this was the proper order to make.

Bicknell, for the sheriff.

Hoyles, for the claimant.

Proudfoot, J.]

[October 4.]

SNOWDEN V. HUNTINGTON.

Costs—Taxation—Local taxing officer—Rule 447.

Rule 447 applies to a taxation of costs conducted by a local taxing officer under the powers given him by 48 Vict. c. 13, s. 22, and an appeal from such taxation does not lie, unless objections are carried in before the officer as required by that rule.

Quay v. Quay, 11 P. R. 258, followed.

Hoyles, for the plaintiff.

W. M. Douglas, for the defendant Morris.