Previous to his obtaining letters of administration to his wife's estate, he had brought an action in his own name against the same defendants for the same purpose, but discontinued it. The costs of the first action being unpaid, the defendants applied for security for costs under Rule 1243.

Held, that the cause of action in the two cases was not the same, and an order staying proceedings till the plaintiff should give security for costs was set aside.

W. H. Blake, for plaintiff.

Aylesworth, for defendant.

FERGUSON, J.] [Feb. 13.

MEIR *v.* WILSON.

Administrator ad litem—Rule 311.

It is not intended by Rule 311 that the business of the Surrogate Court should, in a large measure, be transferred to the High Court; the intention was to provide for necessities arising in the progress of an action, where representation of an estate is required in the action, and there has not been carelessness or negligence on the part of the party who may require the appointment made.

Under the circumstances of this case an application for the appointment of an administrator *ad litem* was refused.

Re Chambliss, 12 P.R. 649, distinguished.

A. H. Marsh, for the motion.

Hoyles, contra.

FALCONBRIDGE, J.] [Feb. 20.

In re MCGREGOR *v.* NORTON.

Prohibition—Division Court—Money paid into Court by defendant—Plaintiff's intention to proceed—Failure to notify in writing—R.S.O. c. 51, *ss.* 125, 126—*Attorning to jurisdiction.*

The defendant in a Division Court suit paid $5 into Court as a full satisfaction for the plaintiff's demand, under R.S.O. c. 51, s. 125. The plaintiff notified the Clerk of the Court, but not in writing, as required by s. 126, that he intended to proceed for the remainder of his claim. The defendant was not notified of this, and did not attend the trial. Judgment was given for the plaintiff, and the defendant moved for, and was granted, a new trial on terms.

Held, that the defendant had attorned to the jurisdiction of the Division Court by moving for a new trial; and that prohibition should not be granted, as the Division Court could, on the new trial, adjudicate upon the objection of the defendant to the plaintiff's failure to notify in writing.

Kappele, for plaintiff.

W. M. Douglas, for defendant.

FALCONBRIDGE, J.] [Feb. 20.

CANADA COTTON CO. *v.* PARMALEE.

Attachment of debts — Unadjusted insurance moneys—Appeal by garnishees.

Insurance moneys alleged to be due to a judgment debtor for a loss where the claim has not been adjusted, acknowledged or admitted, are not attachable under Rule 935 or otherwise.

The garnishee has the right to appeal against an order directing the trial of an issue between the judgment creditors and a claimant of the moneys attached.

Aylesworth, for the garnishees.

D. W. Saunders, for the plaintiffs.

MACMAHON, J] [Feb. 23.

ROBINSON *v.* ROBINSON.

Solicitor and agent—Service of notice—Costs.

A notice of taxation of costs was served on a firm of solicitors in the town where the taxation was to be held as agents of the defendant's solicitors, who lived elsewhere. The solicitors served were not the booked agents of the defendant's solicitors, but had on several occasions acted as their agents in this very suit. The notice did not come to the knowledge of the defendant's solicitors until the day of the taxation.

Held, that the service of the notice was bad; and the taxation pursuant to it was set aside.

No costs were given against the plaintiff, because on the return of the notice the solicitors served as agents appeared, though without instructions, and obtained an enlargement, and this misled the plaintiff.

Rules 202, 203, 204, 461; *Smith* v. *Rowe*, 1 U.C. L.J., N.S. 155; *Hayes* v. *Shier*, 6 P.R. 42; *Omnium Securities Co.* v. *Ellis*, 2 C.L.T., 216, referred to.

W. H. Blake, for defendant.

J. M. Clark, for plaintiff.