

RECENT ENGLISH PRACTICE CASES.

MILLER V. PILLING.

Imp. J. A. 1873, ss. 57, 58—Ont. J. A. ss. 48, 49
—Official referee—Form of report.

A referee under the above sections is not bound to give his reasons for his findings; he may simply find the affirmative or the negative of the issues, and the issues in an action cannot be sent back to him for retrial or further consideration merely on the ground that his report does not set out the reasons for his findings.

[C. A. June 9, 1882—L. R. 9 Q. B. D. 736.]

Per BRETT, L. J.—“If it could be shown that the findings of the official referee were against the weight of evidence, they might be set aside.”

Per COTTON, L. J.—“In my opinion the official referee is not bound to set out the steps by which he has arrived at his conclusion; it is unnecessary for him to do so; he has only to find the ultimate issue of fact.”

[NOTE.—*The Imperial and Ontario sections are virtually identical.*]

WILLIAMS V. MERCIER.

Imp. O. 1, r. 2, O. 40, r. 10—Ont. rules 2, 321—
Interpleader—Motion for new trial—Power of
Court of Appeal.

On the trial of an interpleader issue the jury found that certain properties belonged to B. and that the execution debtor, C., was not entitled to seize them. On an application for a new trial the Court of Appeal held the property belonged to A., the execution debtor, and that C. was entitled to seize them.

Held, the Court of Appeal had power under *Imp. O. 40, r. 10*, (*Ont. r. 321*), to order judgment in the interpleader issue to be entered for the execution creditor without directing a new trial.

[C. A., May 25, 1882—L. R. 9 Q. B. D. 337.]

Per JESSEL, M. R.—“With respect to the order that we ought now to make, it is quite clear that *Order 40, r. 10*, (*Ont. r. 321*), applies to every application for a new trial; there is no exception of interpleader proceedings. It is true that *O. 1, r. 2*, (*Ont. r. 2*), the old practice of interpleader is continued, but there are no negative words in *O. 40, r. 10*, (*Ont. r. 321*), to exclude the new powers of the Court of Appeal in carrying out that practice.”

[NOTE.—*Imp. O. 1, r. 2, is substantially identical with Ont. r. 2. Imp. O. 40, r. 10, is identical with Ont. r. 321.*]

NOTES OF CANADIAN CASES.

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 SOCIETY.

COURT OF APPEAL.

[March 6]

RE PHIPPS.

Extradition—Forgery.

The judgment of the Queen's Bench Division, reported 1 *Ont. Rep.* 585, affirmed.

BELL V. LEE.

Will—Insane delusions—Fraud on power
appointment.

The decree in this cause, 28 Gr. 150, reversed so far as the will was declared void, on the ground of insane delusion.

The testator, under the provisions of his father's will, had the power of appointing his share of his father's estate among his children or his brother or sister. By his will the testator gave portions, about one quarter of his estate to two of his children, and as to the residue he appointed the same to his brother, Charles Thomas Bell, desiring him to pay first his (testator's) indebtedness to his father's estate, and to release his policy of life insurance from such indebtedness, and then gave and bequeathed to Elizabeth Bywater the policy of assurance upon his life for \$3,000, and all moneys arising there from.

Held, that as to the portions of his estate given to his two children the will was valid; but as to the appointment to his brother C. T. B., the same was void as being a fraudulent exercise of the power of appointment; and therefore that as to such residue the will was inoperative and void, and that as to so much there was an intestacy.

Bethune, Q.C., and *Moss, Q.C.*, for appellant.

MacLennan, Q.C., for E. Bywater.

McCarthy, Q.C., and *A. Hoskin, Q.C.*, for respondents.

MCDONALD V. MCARTHUR.

Promissory note—Presentment—No funds.

On an appeal from the judge of a Division Court where the learned judge had given judg-