BOYD, C.] [Jan. 31.

MOON *v.* CALDWELL.

Costs—Administration action—Unnecessary proceedings—Writ of summons or notice of motion—Set-off—Rule 1195—Jurisdiction of taxing officer.

In an administration action the plaintiff was allowed, upon taxation, only such costs as would have been allowed if he had begun his proceedings by a summary application for an administration order under Rule 965 instead of by writ of summons. The defendant urged that he should have taxed to him and set off his additional costs incurred by reason of the less expensive procedure not having been adopted. The defendant had not, in the action, admitted the right of the plaintiff to an account, but had pleaded a release, and had not protested against the increase of costs by the procedure adopted.

Held, that the defendant's additional costs had not been incurred by reason of the plaintiff's improper or unnecessary proceedings, but by the defendant's conduct in not admitting the right to an account, and in not objecting to the plaintiff's manner of proceeding at the earliest possible stage; and the case, therefore, did not come within Rule 1195.

Semble, it would have been proper to raise the question at the hearing; but the taxing officer had jurisdiction under Rule 1195, without an order, to "look into" it.

D. Armour for the plaintiff.

D. W. Saunders for the defendant.

IN RE COUTTS.

Infant—Maintenance—Fund in hands of administrator—Order for application—Jurisdiction—Summary application—Power of court over person or fund.

Where an infant's fund is in court or under the control of the court, a summary order may be granted for the application of it in maintenance upon a simple notice of motion, because the court is seized of the fund and can enforce its order. But if the money is outstanding in the hands of trustees or others, unless they submit to the jurisdiction, summary proceedings are inappropriate, because the court has no power over either person or fund.

And a summary application by the guardian of infants for payment to him or into court by the administrator of the estate of the infants' father of a fund in his hands was dismissed where it was opposed by the administrator.

Re Wilson, 14 P.R. 261, distinguished. *Re Lofthouse*, 29 Ch.D., at p. 929, followed.

Hoyles, Q.C., for the petitioners.

Patullo for the administrator.

F. W. Harcourt for the official guardian.

THE MASTER'S TREES.

(See *ante* p. 46.)

The Registrar explains that he
Is grieved that that old willow tree
Should make three judges disagree.
The reason, if in thought he stood
A moment, is extremely good:
The court was only "sawing wood."