

formance, though the bill be dismissed, if the circumstances be such as to warrant doing this.

Hence, in this suit brought for specific performance of an alleged agreement for the sale of lands by the purchaser against the vendors and a subsequent purchaser, where the judge of first instance had dismissed the bill without costs, but gave the defendant purchaser his costs against defendants, the vendors,

*Held*, the judge had jurisdiction to make such order, and, he having such jurisdiction, the making of it was within his discretion, and he having exercised it, the Court ought not to interfere.

*McMahon v. Barnes* (1858, Order Book No. 9, fol. 730), not reported, followed.

*J. MacLennan, Q.C.*, for defendant Gebbie.

Proudfoot, J.]

[Feb. 20.

FLANDERS v. D'EVELYN.

*Infants—Foreign guardian.*

In this action a guardian appointed by one of the Probate Courts of Minnesota, sought to recover legacies bequeathed to three infant children.

*Held*, on analogy of rule laid down in *Blake v. Blake*, 2 Sch. and Lef. 25, and *Mitchell v. Richey*, 13 Gr. 446, with reference to testamentary guardians, and guardians appointed by our Surrogate Court respectively, (than whom a guardian under the statutes of Minnesota, appeared on the evidence to have no greater powers or duties), that the money must be paid into Court, and could not be ordered to be paid to the foreign guardian.

*Semble*, the rule might be modified if the sum were small, and the whole, or nearly the whole were required for the infants' education and maintenance, or other immediate care.

PRACTICE CASES.

Mr. Dalton.]

[Dec. 8, 1882.

POUCHER v. DONOVAN.

*Attachment—Reference.*

The plaintiff in an action under the Mechanics' Lien Act, obtained a reference to ascertain the amount of his claim.

Pending the reference, one Withrow, an execution creditor of the plaintiff's, for a deficiency after sale of lands in a mortgage suit, applied for an order to attach such sum as might be found due on the reference.

The plaintiff alleged fraud in the mortgage sale and proceedings, and sought relief by way of cross motion under the O. J. A.

The Master in Chambers made an order attaching the amount, if any, that should be found due on the reference.

*Moffatt*, for the application.

*Rae*, for the plaintiff.

*Caddick*, for the defendant.

Mr. Dalton.]

[Feb. 14.

LEONARD v. KEONAND.

*Alimony—Costs.*

The plaintiff in a suit for alimony, returned to her husband pending a motion for interim alimony.

*Held*, that her solicitor was entitled to costs between solicitor and client against the husband

*J. Macgregor*, for plaintiff.

*Badgerow*, for defendant.

HOLMESTED v. VANDERBOGART.

*Action by accountant—Mortgage suit—Proof of claim.*

In an action for sale or foreclosure brought by the Accountant of the Supreme Court to enforce payment of a mortgage vested in him as such accountant, where no defence has been put in, it is not necessary for the accountant to make affidavit in proof of the claim in the Master's Office, but the Master is justified in proceeding on the certificate of the accountant certifying the amount appearing to be in arrear according to his books, and that he has not been in possession of the mortgaged premises.