these will only be dispelled by an authoritative decision which I am bound to follow; but using the best judgment I can, in the light of Last's case, from which I have quoted so fully, and which I think is authority for me to follow, I hold that the amount going to the policy-holders is not income subject to assessment. I may say that in principle I see no difference between the English case of tax for general purposes of Government and here for municipal purposes.

Should the decision in Last's case be reversed and a different rule of taxation be declared, I will hereafter be free to follow that as the latest authoritative exposition of the law.

For these reasons I think the assessment for income should be reduced to $29,926.84, the amount agreed on by Counsel in the event of my decision being as it is.

COUNTY COURT OF NORTHUMBERLAND AND DURHAM.

BURNHAM V. WILLIAMS.

County Court Practice—O.J.A., r. 425.

Applications such as in the High Court of Justice are made on notice of motion in Toronto, may be made in the County Court on notice of motion.

Brown v. *McKenzie*, 18 C. L. J. 203, approved to that extent. But the Court will still allow such applications to be made by summons as under the practice before the Judicature Act.

[Cobourg, Nov.

W. R. Riddell, for plaintiff.

H. F. Holland, for defendant.

CLARK, Co. J.,—This is an application on notice of motion to strike out certain paragraphs of the statement of defence. An objection has been made that the correct practice is that all such applications should, under Rule 425 of the O.J.A., be made by summons. My leanings are all in favour of this latter practice, but I cannot say that the law is clear that the former will not answer. The only reported case, *Brown* v. *McKenzie*, 18 C. L. J. 203, which has been cited to me, is in favour of the practice by notice of motion. I shall, therefore, until corrected, give effect to either practice indifferently.

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

CHANCERY DIVISION.

Boyd, C.] [Oct. 22.

GILLEN V. THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF THE DIOCESE OF KINGSTON IN CANADA.

Mortgage—Custody of payments made to a solicitor —Agency—Adoption of payments.

G., a mortgagee left her mortgage in the office of McM., her solicitor and F., the mortgagor, paid the interest and $3.000 on account of principal to McM. who paid over the interest but retained the $3000 without saying anything about it. F. subsequently paid a further sum of $1.500 on account of principal and other sums of interest, all of which were paid over to G. In a mortgage suit by G. the defendants set up that McM. was the duly authorized agent to receive the sums paid him for principal and interest and it was contended that the subsequent receipt of the $1.500 and interest by G. was an adoption of the previous payment.

Held, that the custody of a mortgage confers no right whatever to the custodian to receive any part of the principal or interest secured. A mortgage not only secures money but it affects the land and so for its effectual discharge not only payment but re-conveyance is essential and for this reason the law does not infer a right to receive the money from the mere possession of this kind of security.

The adoption of a later payment of principal cannot be held to ratify a prior unknown payment unless, possibly it could be shown that there was an intention to adopt all the payments or that the position of the mortgagor was altered for the worse.

Cassels, Q.C., for plaintiff.

Moss, Q.C., and *Burdett*, for defendants.