

Ct. Ap.]

NOTES OF CANADIAN CASES.

[Ct. Ap.]

COURT OF APPEAL.

RE ALGOMA ELECTION.

Practice—Striking out improper statements in petition.

It is the duty of the Court to prevent as far as possible the introduction of the heated language of the election contest into its formal proceedings. Therefore, where, on a motion to a Judge in Chambers, six paragraphs of the petition had been ordered to be expunged on the ground that they contained charges of gross corruption against persons not parties to the proceeding and which, if true, evidence thereof could be given on the trial under other paragraphs of the petition, it appeared on an appeal from the order of such Judge that in another paragraph (the 12th), a charge was made against the returning officer of having purposely placed one of the polling places in an inconvenient locality, by reason of which many voters were prevented from voting; alleging that the returning officer did not act impartially, "but, on the contrary, had lent himself to and became and was the pliant and subservient tool of the said" (naming certain members of the local Government) "or some or one of them and improperly acted under their directions and instructions, with a view to and for the purpose of aiding in the election of," etc., the Court did not feel itself confined to those matters which the respondent thought it necessary in his own interests to bring to their notice, and, in dismissing the appeal, ordered the objectionable portion of such 12th paragraph to be struck out and the appellant to pay the costs of the motion and of the appeal from the order made thereon.

*McCarthy, Q.C., for the appeal.**Bethune, Q.C., and Johnston, contra.*

MAGURN V. MAGURN.

Husband and wife—Alimony—Counsel fees.

A judgment had been given declaring the plaintiff entitled to alimony from her husband, who thereupon appealed to the Court of Appeal. On motion of the plaintiff an order was made by Osler, J. A., directing the husband to pay a sufficient sum to cover the fee necessarily payable by the wife to her counsel, although

if it became necessary to reconsider the practice of ordering the husband to pay his wife's disbursements in suits of this nature he would be strongly disposed to think that, owing to the altered status of married women, the reason for it had ceased to exist.

*Langton, for the application.**C. Millar, contra.*

O'SULLIVAN V. HARTY.

Administration—Agent of Administrator—Costs.

In 1876 J. F. O'S. died intestate in New Brunswick, and the plaintiff—his brother—endeavoured to obtain the administration of his estate, but, owing to his financial position, he was unable to do so, until the defendant, W., and one J., consented to become security for him, which they did on being indemnified. Letters were accordingly granted to the estate and the several securities belonging to the estate converted into money, except some English railway stock, which was handed over to the defendants, but which the plaintiff declined to assist them in realizing. In pursuance of an agreement to that effect, proceedings were instituted in one of the Probate Courts in England with a view of ascertaining the next of kin and to obtain a final decree for the distribution of the estate, when it was ascertained that six other persons were so entitled, and on the taking of the accounts in July, 1878, it appeared that each was entitled to \$1,135.11, but owing to the plaintiff's continued refusals to join in disposing of the scrip, the defendants, in whose hands the funds of the estate had been deposited, were unable to settle with the several persons entitled. The plaintiff made a claim of \$2,500 upon the estate for his commission and expenses incurred in getting in the estate, and in November, 1880, filed a bill to compel the defendants to pay \$1,000 commission and his share of the estate, and also to hand over to him the shares of the other next of kin. At the hearing a decree was made declaring the defendants entitled to their costs as between solicitor and client and ordering the plaintiff to execute all papers necessary to dispose of the railway stock; directed the defendants within two months to settle with the next of kin, other than the plaintiff, and if, after settling with the next of