

Q.B. Div'l Court.]

[Nov. 23.]

SHAVER v. COTTON.

*Pleading -- Sci. fa. — Company — Promissory notes — Fraud — Ultra vires — Defences available in original action.*

In an action by way of *sci. fa.* against a shareholder in an incorporated company, against which the plaintiff had recovered a fruitless judgment, the defendant alleged as defences that the judgment was recovered upon certain promissory notes which the plaintiff procured the company to make to him, without consideration, when insolvent to his knowledge; that the notes were made in fraud of the creditors and contributories, and were *ultra vires* of the company; and that the company had a good defence to the action on the notes, but allowed the plaintiff to take judgment by default.

*Held*, that these defences might have been raised in the original action, and were not available in this; and they were struck out.

*F. E. Titus* for the plaintiff.

*Raney* for the defendant.

Q.B. Div'l Court.]

[Nov. 26.]

BOECK v. BOECK.

*Master's report — Confirmation — Alimony — Execution.*

Where a reference is directed to the Master to ascertain and state the amount of alimony which the defendant should pay, execution may be issued for the amount found by his report before confirmation thereof.

*Lewis v. Talbot Street Gravel Road Co.*, 10 P.R. 15, approved and followed.

*G. G. Mills* for the plaintiff.

*D. O. Cameron* for the defendant.

WRIGHT v. BELL.

*Solicitor's lien — Costs of litigation — Administration — Share of party — Costs of other parties — Priorities — Time.*

Where, in an action for construction of a will and administration of the testator's estate, costs were ordered to be paid by one of the defendants to the other parties;

*Held*, that they were entitled to be paid these costs out of his share of the fund in court arising from the sales of the estate, in priority to the cost of his own solicitor, whose lien, if any, attached only upon the ultimate sum to which his client was entitled.

*Per* BURTON, J.A.: The claim of the other parties could be properly made at any time before payment out of the fund.

Order of ROSE, J., reversed.

*A. H. F. Lefroy* and *H. T. Beck* for the appellants.

*McBrayne* for the respondent.