

Prac.]

NOTES OF CANADIAN CASES—FLOTSAM AND JETSAM.

Mr. Dalton, Q.C.] [Nov. 5.
BROWN V. NELSON.

Interpleader—Fi. fa. goods—Shares.

A sheriff having seized certain shares of the capital stock of a public company under a writ of *fi. fa.* goods and having received notice of a claim to the shares made by an assignee of the judgment debtor applied for the usual interpleader order.

Held, that goods and chattels include "stock" for all the purposes of the Execution Act, and of the clauses for relief to the sheriff by interpleader.

Interpleader order made.

Aylesworth, for the sheriff.

C. R. W. Biggar, for the execution creditor.

Wallace Nesbitt, for the claimant.

Mr. Dalton, Q.C.] [Nov. 8.
BROWN V. NELSON.

Set-off—Costs—Solicitor's lien.

A motion by the defendant to set-off so much of the money recovered by the defendant against the plaintiff on defendant's counterclaim as will cover the costs adjudged to the plaintiff on his recovery against the defendant on his statement of claim.

The plaintiff's solicitors asserted a lien for costs which they contended should operate to prevent the set-off.

Held, under the circumstances that the plaintiff's solicitors had no right to interpose his interests to prevent equity being done between the principal parties.

Set-off ordered.

C. R. W. Biggar, for the motion.

Wallace Nesbitt, contra.

Master's Office.]

MERCHANTS' BANK V. MONTEITH.

Imp. Act 38 Geo. 3 c. 87—R. S. O. c. 40, sec. 34 and 35, c. 46, sec. 32—Infant—Administration—Nullity—Suits by an infant—Liability for costs.

The 6th sec. of 38 Geo. 3. c. 87 (*Imp.*) prohibiting the grant of probate to infants under the age of twenty-one is in force in Ontario, either as a rule of decision in matters relating to executors and administrators (*R. S. O. c. 40, sec. 34 and 35*) or as a rule of practice in the

Probate Court in England (*R. S. O. c. 46, sec. 32*).

An infant cannot lawfully be appointed administrator of an estate; and therefore a grant of probate or of letters of administration to an infant is void and confers no office and vests no estate in such infant. An infant had been appointed administrator of an estate and various suits had been brought in his name on behalf of such estate.

Held, that being an infant he was incapable of bringing suits in his own name or of making himself or the estate he assumed to represent liable for the costs of such suits.

Sections 57 and 58 of the Surrogate Act (*R. S. O. c. 46*) protect parties *bona fide* making payments to an executor or administrator notwithstanding any invalidity in the probate or letters of administration, but they do not protect payments made to third parties by an infant assuming to act as administrator of the estate. See *ante* p. 377.

FLOTSAM AND JETSAM.

ORIGIN OF TRIAL BY JURY.—I. Phillips and Probst maintain that it originated among the Welsh, from whom it was borrowed by the Anglo-Saxons.

2. Coke, Von Maurer, Phillips, Selden, Spelman and Turner, regard it as having been original with the Anglo-Saxons.

3. Bacon, Blackstone, Montesquieu, Nicholson and Savigny hold that it was imported from *primitive* Germany.

4. Konrad Maurer thinks it is of North German origin.

5. Warmius and Warsaae agree that it was derived from the Norsemen through the Danes.

6. Hicks and Rees thinks it came from the Norsemen, through the Norman conquest.

7. Daniels says the Normans found it existing in France and adopted it.

8. Mohl thinks it derived from the usages of the Canon law.

9. Meyer thinks it came from Asia by way of the Crusades.

10. Maciejowski says it was derived from the Slavonic neighbours of the Angles and Saxons.

11. Brunner, Palgrave and Stubbs derive it from the Theodasian Code through the Frank Capitularies.

12. Hume says that it is derived from the decenary judiciary, and is "an institution admirable in itself, and the best calculated for the preservation of liberty and the administration of justice that was ever devised by the wit of man."