

But where the defendant, after the time for giving security under the order had expired, opposed a motion for judgment under Rule 739, and appealed to a Judge in Chambers and afterwards to a Divisional Court from the order made upon such motion, without taking the objection that the action was at an end ;

Held, that he had waived the objection, and a bond filed after the time limited was allowed.

Carter v. Stubbs, 6 Q.B.D. 116, followed.

Burns v. Chisholm, 2 Ch. Chamb. R. 88, not followed.

Newcombe v. McLuhan, 11 P.R. 461, referred to.

Teetzel, Q.C., for the plaintiff.

Bartram (London) for the defendant.

ROSE, J.]

KAVANAGH *v.* LENNON.

[Sept. 28.]

Infant—Money in court—Payment out—Marriage—Foreign law.

Where a female was entitled, at majority, to payment out of court of a sum of money, and it appeared that, although only nineteen years of age, she was married and domiciled in a foreign country, by the laws of which a female is entitled, upon marriage, to receive money due her, an order was made for immediate payment out.

E. T. Malone for the applicant.

J. Hoskin, Q.C., official guardian, *contra*.

OSLER, J.A., }
In Chambers. }

[Sept. 28.]

RE WEST.

Appeal—Single judge—R.S.O., c. 50, s. 33—Judge in court—Costs.

An application having been made to the Judge of the Surrogate Court of the County of Middlesex to pass the accounts of the executors of the West estate and to fix their compensation, he fixed it at more than \$200, and from his order the executors, being dissatisfied, appealed, under s. 33 of the Surrogate Courts Act, R.S.O., c. 50, to a judge of the Court of Appeal, who dismissed the appeal with costs.

Upon taxation of these costs, the executors contended that the appeal was to a Judge in Chambers, and not to the court, and that the costs should be taxed accordingly.

Section 33 permits an appeal "to the Court of Appeal, or to a single judge of such court."

The taxing officer referred the question to OSLER, J.A., who had heard the appeal, and it was argued before him on the 27th of September, 1894.

W. E. Middleton for the appellants.

Rowell for the respondents.

OSLER, J.A. : As to the appeal to "a single judge," provided for by the Surrogate Courts Act, R.S.O., c. 50, s. 33, I am of opinion, after consultation with the other judges of this court, that there is no reason to regard an appeal to a single judge as an appeal to a Judge in Chambers, as the statute does not call it so. Costs should be taxed on the usual scale.