PRACTICE.

Q. B. Div.] [Jan. 6, 1885.

WILSON v. ROBERTS.

Libel—Costs—Nominal damages—Rule 428 O. J. A.

Where in an action of libel a verdict for $1 damages was found, and the judge at the trial gave no certificate for costs,

Held, that the plaintiff was entitled to tax full costs.

The statute 21 Jac. I., ch. 16, having been as to costs in actions of libel, etc., overridden by Rule 428 O. J. A., *held* to apply to actions of libel as well as slander, and *Garnett* v. *Bradley*, L. R. 3 App. Cas. 944, followed.

H. J. Scott, Q.C., for defendant.

Aylesworth, for plaintiff.

Galt, J.] [June 15.

COLQUHOUN ET AL. v. MCRAE.

Sheriff—Seizure—Sale—Fees—Poundage.

A sheriff, under a writ commanding him to levy $630 and accruing interest out of the goods of the defendant, seized some wheat, but did not remove it or put any person into possession, taking a bond for its safe keeping and delivery to him when demanded. No day for sale was fixed, nor were notices of sale posted or prepared, when the sheriff received a letter from the plaintiff's solicitor, directing him to withdraw the seizure upon payment by defendant of his fees and charges.

The sheriff accordingly notified the defendant of his withdrawal, and obtained payment of $52, the amount he claimed for fees and poundage, under protest. No money, except this, passed through the sheriff's hands, and he made no levy.

Upon an application to the local judge at Pembroke to compel the sheriff to refund, and upon appeal to GALT, J.:

Held, that the sheriff was not entitled to poundage; but he was allowed $10 in lieu of poundage, and $8.68 for fees and expenses, and was directed to refund the balance of the $52.

Held, also, that the sheriff was not entitled to retain the amount ordered to be refunded for the purpose of applying it on another execution against the defendant.

Holman, for the sheriff.

Aylesworth, for the defendant.

C. P. Div. Ct.] [June 26.

MACGREGOR v. MCDONALD.

Discovery — Fraud — Subsequent dealings with estate—Examination—Production—Privilege—Solicitor.

In this action the plaintiff, in her statement of claim, charged her brother, the defendant D. M. McD., with inducing her father to make a will in her mother's favour, with the fraudulent design on the part of D. M. McD. of obtaining the whole estate for himself, and charged that her father was induced to make the will by fraudulent misrepresentations, and that after her father's death, D. M. McD. obtained from her mother a power of attorney to manage the estate, and invested large sums in the purchase of property in his own name and that of his wife, and prayed to have the will set aside. D. M. McD., in his examination for discovery before the trial, admitted receiving the power of attorney from his mother after his father's death, and dealing with the estate under it.

Held, that although what took place after the father's death was no proof of the fraudulent design, yet it might throw light upon it, and the plaintiff was entitled to interrogate D. M. McD. upon his examination before the trial, as to whether he had invested the moneys of the estate in his own or his wife's name; but that a general inquiry as to his dealings with each part and parcel of the estate, or as to what property came into his hands under the power of attorney, would be burdensome and oppressive, and should not be permitted. *Parker* v. *Wells*, 18 Ch. D. 477, considered and followed.

The defendant, D. M. McD., claimed privilege for certain documents in his possession, asserting that he held them merely as solicitor for his mother and co-defendant, F. McD.

Held, that D. M. McD. should not have been ordered to produce these documents, without F. McD. being called upon to show cause why they should not be produced.

W. Cassels, Q.C., and *C. J. Holman*, for D. M. McD,

MacGregor, for the plaintiff.