

The judgment of the Court (MEREDITH, C.J., LOUNT, J.), was delivered by MEREDITH, C.J.—In the view we take it is unnecessary to consider whether, having regard to Rule 488, it is necessary for a defendant to plead the facts on which he intends to rely in mitigation of damages, assuming the question open since *Beaton v. Intelligencer Printing Co.*, 22 A. R. 99, or whether, if it be not necessary to so plead, it is proper to examine for discovery as to matters affecting damages only, unless and until the notice has been given. There being on this record the defence of privilege, it is impossible to say that the questions asked are not relevant. . . . Appeal dismissed with costs.

McEvoy, Pope, & Perrin, London, solicitors for plaintiff.

Meredith & Fisher, London, solicitors for defendant.

FALCONBRIDGE, C.J.

JANUARY 21ST, 1902.

TRIAL.

WHITE v. McLAGAN.

Will—Construction—Bequest of Interest to Legatee so long as Unmarried or a Widow—Accumulation during Coverture—Valid Limitation—Condition—"Again."

Action by trustees under the will of Joseph Hancock, deceased, for its construction.

A. Bruce, K.C., for plaintiffs.

S. F. Washington, K.C., for defendant J. McLagan.

W. W. Osborne, Hamilton, for infant defendants.

FALCONBRIDGE, C.J.—The material parts of the will, as far as the purposes of this inquiry are concerned, are as follows (for convenience of reference I have numbered the paragraphs):

And as to all the rest and remainder of my said real and personal estate and effects, and any gifts which may become forfeited as aforesaid, upon trust to sell, convey, realize and convert the same into money with all due diligence, and after the death of my said wife and sister respectively, to sell and convey the said dwelling house, premises and lots devised for their benefit as aforesaid, and to invest the said moneys in first-class real estate mortgage security from time to time at such rate of interest as they may think proper.

1. And to divide the residue of said trust moneys and the interest thereon, and accruing thereon, into thirteen equal shares, and I direct the payment of one of such shares of the said interest annually, upon application for such
