

There was no entry or possession taken by plaintiffs before action commenced.

Held, affirming the judgment of ROSE, J., that by reason of there being no such entry or possession the action was not maintainable.

Per CAMERON, C. J.—To entitle the plaintiffs to recover either at law or in equity, an entry upon the land by the plaintiffs must have been made at a time when they had a right to make such entry to carry the legal possession with it.

Held, also, *per* ROSE, J., (1) that the general language of the will was controlled by the codicil, and so the debts were not charged on the unappropriated estates; and therefore the executors had no power to sell the timber on the land in question: (2) that if a power of sale was given to the executors it could not be exercised until after the lands specifically appropriated had been sold; and, (3) that the purchaser, not shielded by sec. 30 of 29 Vic. ch. 20 (O.), was bound to see that the power was rightly exercised. *Baker et al. v. Mills*, 253.

3. *Will—Construction—Vesting (liable to be divested to let in new members of a class).*—A testator devised certain land to E. T. "during his and M. A.'s natural life, then and after that to be given to M. A.'s children to them, their heirs and assigns forever."

Held, that the children of M. A. in existence at the testator's death forthwith took vested interests, subject to be partially divested in favour of children of M. A. subsequently coming into existence during the life of M. A., and that the representatives of any child dying before the period of distribution were entitled to claim the share of that child.

Paradis v. Campbell, 6 O. R. 632, distinguished. *Latta v. Lowry et al.*, 517.

4. *Mistake of title—Occupation rent—Enhanced value—Allowance for improvements—Interest on money expended—Mode of taking account—Will—Construction—Charge on reversionary interest operating from death of testator—Interest on legacies paid under mistake of title—R. S. O. ch. 95, sec. 4—Evidence as to value.*—In fixing an occupation rent to be charged against one who had been occupying land under mistake of title, and at the same time in allowance to be made to him for improvements, if such occupation rent is charged on the full increased value (as it should be in such case) then interest should be allowed on the actual costs of proper outlay for lasting improvements as an offset.

Manner of taking the account and contra account in such cases pointed out.

A testator made his will as follows:—"I leave to M. the W. $\frac{1}{2}$ of lot 9 during her natural life. I leave to my son A." (an imbecile) "his board and lodging with £5 per year during his natural life, to be given as hereinafter mentioned. I leave to B." (certain other lands) "under the following restriction: i. e., he is to pay A. £3 every year during his natural life. I leave to R. the W. $\frac{1}{2}$ lot 9, after his mother's death, on the following condition: i. e., £2 in each year to be paid by him to A., and to keep A. in board and lodging during his natural life."

The devise to R. failed, he being an attesting witness.

Held, that Adam's maintenance as from the death of the testator, and not as from the death of M., was a charge on the W. $\frac{1}{2}$ lot 9 in the