

Chan. Div.]

NOTES OF CANADIAN CASES.

[Prac. Cases.

the finding of the Master was, therefore, regularly set down under the provisions of that Act, to be heard before a single Judge in Court.

The form of the order of reference observed upon, and the ordinary and well-known terms of reference, recommended to be followed.

*McKee*, for the plaintiffs.

*Watson*, for the defendant.

CHANCERY DIVISION.

Boyd, C.]

[March 14.

BOYS' HOME v. LEWIS.

*Will Gift to trustees as a class—Construction— Compensation to executors—Interest on balance retained by executors.*

Appeal from Master's report. Residuary gift to trustees in trust "to divide and pay the same to and among my legatees hereinafter named and my said trustees, or the survivor of them, in even and equal shares and proportions."

*Held*, the trustees took as a class, *i. e.*, one share, equal to the shares taken respectively by the legatees, for looking at the whole will it appeared the testator was speaking of the trustees in their official capacity, and regarding them as one legal person.

It is a principle of construction that the same meaning shall, as far as possible, be given to the same words in the same will.

Where there is a bequest of a share of the residuary estate to executors it is not to be inferred that the bequest was given in lieu of compensation, as in the case of a legacy of a definite sum, but it is nevertheless one of the elements to be considered in dealing with the question of compensation.

*Held*, in this case, the executors were entitled to compensation, notwithstanding a bequest to them of a share of the residue, because the amount of the residue was, when the will was made and after the testator's death, a matter of extreme uncertainty.

By the usual course of the Court interest is not chargeable against an executor till after the end of the first year *prima facie* the fund is then distributed, and if he keeps money thereafter in his hands without reason he will be charged with interest.

*Held*, in this case, there was no good reason for not charging the executors with interest upon the residue in their hands after the time when

it was distributable. The usual rate of interest should be charged upon it from the time it might properly have been distributed or appropriated down to the time of its actual payment, or, if not yet paid, down to the present time.

*S. H. Blake*, Q.C., for the trustees.

*E. Martin*, Q.C., for defendant Rachel Evans.

*J. M. Gibson*, for the plaintiff.

Boyd, C.]

[March 14.

SCANE v. DUCKETT.

*Demurrer—Creditor's action—Bills of costs— R. S. O. c. 140, s. 32.*

In an action to set aside a conveyance of land as an undue preference, and fraudulent and void under 13 Eliz. c. 5, and 27 Eliz. c. 4, the averment that the plaintiff sues on behalf of all other creditors is a mere formality, and not ground for demurrer. The objection that there is no such averment is, at the highest, one savouring of non-joinder, and is to be dealt with under Rules 103, 104.

In an action by a solicitor to recover the amount of a bill of costs, the fact that he does not, in his statement of claim, allege that the bill was delivered a month before action brought, pursuant to R. S. O. c. 140, s. 32, is not now, any more than before the Judicature Act, ground for demurrer, but if the defendant wishes to take the objection he must allege it as a ground of defence. Though under R. S. O. c. 140, s. 32, the right of action on a bill of costs may be suspended pending a month from delivery, nevertheless the solicitor is a creditor, and may as such, before the expiration of such month, bring an action to set aside a voluntary conveyance as fraudulent and void.

*Wilson*, for the demurrer.

*Hoyle*, contra.

PRACTICE CASES.

Proudfoot, J.]

[Feb. 2.

RYAN v. FISH

*Dower and damages for detention—Judgment of seisin—Mistake of solicitor—Discretion of Master—R. S. O. ch. 55, sect. 20.*

In an action for dower and damages for detention of dower defendants appeared under