

court: Per KILLAM, J., in *Hudson's Bay Co. v. Macdonald*, 4 M.R. 237, and JESSEL, M.R., in *Lysaght v. Edwards*, 2 Ch.D. 506.

*Moran*, for plaintiffs. *Jameson*, for defendants.

Mathers, J.]

[April 14.

CITY OF WINNIPEG v. WINNIPEG ELECTRIC RY. Co.

*Pleading — Amendment — Defences arising after delivery of statement of defence.*

Defences arising after the delivery of the statement of defence should be allowed on the defendant's application to amend if they are such that they may be fully met by facts set up by the plaintiff in reply.

If, however, an amendment sought to be made to the statement of defence is of such a nature that it would, if made, put the plaintiff in such a position that he could not be compensated by costs or otherwise, it should be refused upon an application made for leave to make it after the lapse of the eight days from the delivery of the statement of defence within which, by rule 339 of the King's Bench Act, the defendant may of right make such an amendment. *Steward v. North Metropolitan Tramways*, 16 Q.B.D. 180, 558; *Lee v. Gallagher*, 15 M.R. 677, and cases collected in *Annual Practice*, 1909, p. 370, followed.

*Vilson and Hunt*, for plaintiffs. *Munton*, K.C., and *Laird*, for defendants.

Mathers, J.]

RE FERGUSON.

[April 16.

*Will—Sale of devised land by testator subsequent to will—Bequest of "cash, negotiable notes and mortgages"—Compensation to executors—Lapse.*

*Held*, 1. Notwithstanding s. 21 of the Wills Act, R.S.M. 1902, c. 174, a devise of land specifically described fails when the testator has, after making the will, entered into an agreement to sell the land, although no part of the purchase money has been received during his lifetime, and the devisee takes no interest in either the land or the purchase money. *Ross v. Ross*, 20 Gr. 203, and *Jarman on Wills*, p. 129, followed.

2. Unpaid purchase money of land sold by the testator in his lifetime will not pass under a bequest of "all cash, negotiable