

the testator's death returned to England and remained six months for the benefit of his health, when he went back to Australia, where he had ever since resided, having taken no part in the execution of the trusts, and without having proved the will. The other trustee named in the will, in exercise of a statutory power, appointed another person co-trustee with himself under the will, and they together contracted to sell part of the trust estate to the purchaser; and the question was whether they could make good title in the absence of F. E. Bucknall. North, J., held that they could not, as there had been a substantial compliance with the condition, and that Bucknall had therefore become a trustee. He therefore ordered the vendors to refund the deposit and pay the respondents' costs of investigating the title. The vendors appealed, and on the appeal claimed the right to annul the contract, in the event of the Court upholding the decision of North, J., under a condition of sale which enabled them to do so, "notwithstanding any previous negotiation or litigation"; but the Court of Appeal (Lord Coleridge, C.J., and Lindley and Kay, L.JJ.) affirmed the decision of North, J., and also held that the vendors could not annul the contract after there had been an actual judicial decision on the question of title, as it was then too late to exercise the power of annulling the contract, because the term "litigation" was not equivalent to "judicial decision." As Kay, L.J., puts it, it means "litigation pending, not litigation decided adversely to them."

MARRIED WOMAN—COSTS ORDERED TO BE PAID BY MARRIED WOMAN, LIABILITY OF SEPARATE ESTATE FOR—MARRIED WOMAN'S PROPERTY ACT, 1882, s. 1, s-s. 2, s. 19 (R.S.O., c. 132, s. 3, s-s. 2 s. 20).

*Cox v. Bennett* (1891), 1 Ch. 617, was an application by trustees who had obtained an order for payment of costs against a married woman, in an action instituted by her against them without a next friend, for leave to retain the costs out of a sum of money in their hands to which the married woman was entitled, as arrears of income due her, and which was her separate property. The question was whether this fund was answerable for the costs of the proceedings in question, it not having been in the trustees' hands when those proceedings were commenced, and there being a restraint on anticipation. Kekewich, J., held that the trustees were entitled to deduct their costs out of the moneys in question, and the Court of Appeal (Lindley and Kay, L.JJ.) affirmed his decision.

PRACTICE—AFFIDAVIT—DESCRIPTION OF DEPONENT AS "GENTLEMAN"—RULE 528 (ONT. RULE 605).

In *re Dodsworth*, *Spence v. Dodsworth* (1891), 1 Ch. 657, Chitty, J., explains the effect of *Re Orde*, 24 Ch.D. 271. According to his view of that case, it does not decide that an affidavit in which the deponent is described as "gentleman" cannot be filed, but that it is for the Court to say, having regard to the nature of the application in which the affidavit is used, whether that description is sufficient for the purpose of enabling it to weigh the value of the deponent's evidence. In *Re Orde* the affidavit was one of fitness of a proposed trustee, and the Court then held the description too vague and refused to receive it.