

Chan. Ch.]

McDEARMID v. McDEARMID—DARLING v. DARLING.

[Mas. Office.

application have been delayed for that purpose. The present application must of necessity be in the nature of a rehearing of the original order, otherwise two inconsistent orders would stand.

*Donovan, contra.*

BLAKE, V. C., sustained the objection and dismissed the appeal holding as above.

*Appeal dismissed.*

#### MASTER'S OFFICE.

##### McDEARMID v. McDEARMID.

*Conveyancing—Release of dower to tenants in Common—Accrual.*

Where a widow purported to release "All my dower . . . in, to, out of all that certain . . . lot" to two of more tenants in common, *Held*: (1) her dower was gone in the whole lot; (2) there was no accrual in favour of the other tenants in common.

[Mr. Taylor.—Dec. 9, 1878.

This was a partition suit. The widow claimed dower, and the question arose in the Master's Office as to what was the legal effect of a certain quit claim deed, dated January 8, 1869, by which J. McD., the widow, released as follows: "I . . . quit claim unto the said Donald McD. and Malcolm McD. their heirs executors and administrators all my dower or right or title to dower and arrearages of dower which I now have or can or may hereafter have or claim in to out of all that certain parcel or tract of land and premises . . . containing . . . 200 acres . . . and being composed of lot 31." Besides Donald and Malcolm there were four other persons entitled to shares in the land, subject to J. McD.'s right of dower, as tenants in common. Malcolm's interest had become vested in one Currie, and there had been divers cross conveyances between the parties.

*Foster*, for plaintiff: The widow cannot claim against the persons to whom she released. They were tenants in common, and have undivided shares; therefore her dower is gone in the whole. Or, if her claim is merely right of action, it is gone, and the result is the same. Donald has parted with his interest, and his grantee has a right to share in the dower.

*Seton Gordon*, for Currie: Dower can be

assigned in equity, though not in law. The release does not speak of releasing the shares of the grantees, but all dower. A release to some tenants in common accrues to the benefit of all.

*Hoyle*s, for Malcolm: The parties here are not joint-tenants, but only tenants in common, therefore there is no such accrual. Donald and Malcolm can claim to have the dower assigned to them. A stranger could have done so, therefore so can they. They are strangers to the estates of the other tenants in common. The quit claim deed is sufficient to pass a fee. He cited various authorities.

*Foster*, in reply: If Malcolm as assignee make a claim, and some of the parties were ready to assign to the widow her portion, out of what part of the land would she take it, the shares being undivided?

THE MASTER: In my opinion, the effect of the release and quit claim deed of Jan. 8th, 1869, executed by J. McD., was to give her two sons, Donald and Malcolm, all her right to dower in the 200 acre lot. Then Donald conveyed to Malcolm all his interest in the east half, and Malcolm conveyed to Donald all his interest in the west half, so that Malcolm then owned his mother's life estate as doweress on the east half, and he was also entitled, subject to that life estate, to 2-11ths, and Donald had the same interest in the west half. By several meane conveyances the interest Malcolm had in the east half is now vested in Currie, who is entitled thereto, including the widow's dower in that half, and to the shares which he has acquired from some of the other members of the family. The interest Donald had in the west half is now vested in Malcolm, who is similarly entitled.

##### DARLING v. DARLING: Re Rossas' claim.

*Practice—Administration suit—Impeaching an instrument in the M.O. for fraud—Practice in such cases—G. O. 60.*

*Held*, (1) An instrument may be impeached in the Master's Office for fraud, where the question legitimately emerges during a reference. (2) This may be done, though an executor be thereby delayed in passing his accounts, where the question raised affects the accounts, and where, moreover, the executor is charged with participation