

after they were due. Plaintiffs were not justified in waiting so long without the express consent of defendants' solicitors or obtaining an order for that purpose. . . .

In the first action an affidavit has been filed stating that towards the end of last year there was a fire on the premises in question in that action, and relying upon the supposed fact that the action was at an end, the mother of defendant in that action rebuilt part of the burnt premises, and expended considerable money thereon.

The defendant in the second action . . . says that, in the belief that the litigation was at an end, he has laid out a great deal of time and money on the buildings and premises, having practically rebuilt the house. . . . and that it is now worth 6 times as much as when this action was begun.

In these circumstances, I think that an order should be made allowing the statements of claim to stand, and giving defendants such further time to put in their defences as they may desire. But plaintiffs must agree, in case they succeed in the actions, to allow defendants to have the benefit of R. S. O. 1897 ch. 119, sec. 30, as to any lasting improvements made by them since 1st April, 1903, and before 1st February, 1905; and a direction to that effect should be inserted in the order.

The costs of the motions will be to defendants in any event.

TEETZEL, J.

MARCH 1ST, 1905.

WEEKLY COURT.

RE BOWER.

*Settlement—Trust Deed—Construction—Equitable Estate in Fee of Settlor — Rule in Shelley's Case — Devolution of Estates Act—Distribution of Estate.*

Motion under Rule 938 by John Balmer and Cornelius McBrayne, trustees under a certain trust deed, dated 31st January, 1884, executed by William Bower, since deceased, for an order determining two questions arising upon the construction of the trust deed, viz.: (1) Who are to share in the trust estate as the right heirs of William Bower according to the laws of descent in Ontario? (2) Whether under the trust deed the property vests in the administratrix of the estate of William Bower, under the Devolution of Estates Act, for the purposes of distribution.

The trust deed conveyed to the applicants (and another trustee, since deceased) a farm of 80 acres, "to have and to