

Q. B.]

NOTES OF CASES.

[Q. B.]

close up part thereof, and dispose of it to trustees of a church.

The by-law for this purpose contained a provision that the trustees of the church should pay all expenses in connection with the by-law, and that it should not take effect till the municipality had been indemnified against loss by reason of passing it and of any proceedings to quash it.

Held, bad on its face, for it was plainly not passed in the public interest, but for the benefit of a particular class.

Held, also, that the applicant was not precluded from moving against the by-law by reason of his having expressed an opinion in its favour before its passage.

Costs were not asked for in the rule, though they were at the bar: *Held*, that as costs are in the discretion of the Court under the Judicature Act, this was no objection.

C. A. Durand, for the applicant.

J. K. Kerr, Q. C., contra.

CHANCERY DIVISION.

Ferguson, J.]

[September 12.]

KEEFER V. MACKAY.

Will, construction of—Vested estate—Trustee for sale—Partition.

A will contained a devise, in trust for the support and maintenance of the testator's widow, during her life or widowhood, with a direction that she should have the full right to possess, occupy, and direct the management of the property; and at her death or second marriage, "my son Thomas, if he be then living, shall have and take Lot one, which I hereby devise to him." Thomas died before his mother.

Held, that he took a vested remainder in Lot one. The will further contained a devise of lots two, etc., to the testator's sons, Alexander, John, Charles and Thomas, their heirs, and assigns, as tenants in common, and a direction that the same should take effect from and after the death or second marriage of the testator's widow. There was a proviso that if any child died without issue before coming into possession of his share the same should go to the survivors. An indenture was executed between the parties, conveying all the estate,

etc., of those interested to Alexander, John, Charles and Thomas, after the execution of which Alexander and Charles died. An Act of Parliament was subsequently passed confirming this indenture and declaring that it should take effect from its date and not to be affected by subsequent deaths of the testator's children, and it confirmed the estate in John and Thomas as tenants in common subject to the life estate of their mother, and with the right of survivorship between them in case of one dying before the other, before the death or marriage of their mother. After this and in his mother's lifetime John died.

Held, that Thomas took a vested remainder in fee expectant upon the determination of his mother's life estate.

The residue of the estate was directed to be converted, and to be at the disposal of the widow for her life, while she remained unmarried, and thereafter to the children. This was subject to the above proviso as to coming into possession.

Held, that the children took vested interests in the fund, subject to be directed on the contingency mentioned.

The plaintiff being a trustee for sale was held not to be in a position to ask for partition.

S. H. Blake, Q. C., for plaintiff.

John Hoskin, Q. C., for infant defendants.

MacLennan, Q. C., *Rae* and *Black*, for other defendants.

Boyd, C.]

[Sept. 29.]

CAMPBELL V. CAMPBELL.

Pleading—Demurrer—Alimony—Fraudulent conveyance.

The plaintiff filed her bill for alimony, alleging that a conspiracy had been entered into between her husband and the other defendant to prevent her realizing any alimony that might be awarded her, and for that purpose the husband had fraudulently conveyed all his lands to his brother—the co-defendant, and praying to have the same declared fraudulent. The brother demurred for multifariousness, want of equity, and want of parties.

The Court [Boyd, C.] over-ruled the demurrer on the first two grounds, but allowed that for want of parties; the plaintiff not having re-