CHANCERY.

Ferguson, V. C.] [June 7.

IN RE SAYERS; SAYERS V. KIRKPATRICK.

Administration—Additional commission.

Upon an application under G. O. 643 for an order awarding an additional sum for costs, in the distribution of the estate, The Court, in view of the unusual amount of work done and the responsibility borne by the solicitors in the matter, the amount the estate realized having exceeded $44,000, it was referred to the Master to tax to all parties their disbursements, and to fix a proper sum to be paid for their services performed since the making of the original report, the same to be paid out of the moneys belonging to the estate.

H. Cassels, for plaintiff.

J. Hoskin, Q. C., for defendants.

Ferguson, V.C.] [June 7.

MCLAREN V. CALDWELL.

Injunction—Appeal—Stay of proceedings.

In an injunction suit to restrain the use of an improved stream, claimed by the plaintiff, the defendant appealed from a decree restraining the use thereof, and while the case was under consideration in the Court of Appeal, the plaintiff issued his injunction and served it. The defendant thereupon moved to stay proceedings, on the ground that execution was stayed under section 27 of the Court of Appeal Act upon security being perfected.

The Court refused the application on the ground that this section does not apply to injunctions, whether issued before or after decree.

Bethune, Q. C., and *Moss*, for the motion.

McCarthy, Q. C. (with him *Creelman*), contra.

Spragge, C. J. O., as Chan.] [June 11.

PARKS V. MOFFATT.

Conveyance to uses—Construction of—Estate tail—Lease of tenant in tail—Rack-rent.

A conveyance was made to B. & B., "in trust to hold the same for the use of M. A. L., wife of F. L., and the said F. L., for their joint lives, and upon, from, etc., in trust for the use of, etc.," so as to create an estate tail.

Held, that notwithstanding the use of the word "trust," B. & B. were grantees to uses only, and that M. A. L. and F. L. took a legal estate in fee tail.

Grantees to uses had made a lease for nineteen years, in which the *cestuis que use* had joined for the purpose of consenting thereto. The Court being of opinion that the supposed trustees were grantees to uses only,

Held, that such lease was inoperative, as the *cestuis que use* had not created any estate, but had consented only to the act of the grantees to uses.

The lease so intended to be created had not been registered within six months after execution, and the rent reserved was not a rack-rent, or five sixths of a rack-rent.

Held, invalid under the Act relating to assurances of estates tail.

The *cestuis que use* made an assignment of the right to receive the rents and royalties payable under such lease, and used words of conveyance of their estate. But,

Held, that such assignment could not operate to validate the lease.

Moss and *Lister*, for plaintiff.

McArthur and *Moncrieff*, for defendants.

Boyd C.] [June 15.

KILLINS V. KILLINS.

Further directions—Defendant setting down—Right to begin.

The setting down of a cause by the defendant, under the G. O. upon the plaintiff's default so to do, does not take away from the plaintiff his right to begin.

W. Cassels, for plaintiff.

Moss, for defendant.

Boyd C.] [June 25

STAMMERS V. O'DONOHOE.

Vendor and purchaser—Vendor's duty as to incumbrances—G. O. 226—Practice.

A vendor agreed to pay off a mortgage existing on the property, and the decree directed a good and sufficient conveyance "according to said