

*Held*, upon the evidence, that the oath of allegiance was made subsequent to July, 1885, and was therefore insufficient to constitute relator a British subject under the present statute, R.S.O. c. 113.

*Held*, also, that in the absence of an affidavit by the respondent showing his property qualification the other evidence must be taken most strongly against him, because this is a matter peculiarly within his own knowledge as to which he has not seen fit to make any statement.

Motion dismissed on the ground of relator not being a British subject, but without costs.

*E. T. English*, for relator.

*Rowell*, for respondent.

BOYD, C.]

TURNER v. DREW.

[April 29.]

*Trust—Deed by husband—Rents—Yearly income—For the use of wife and children—Interests or shares in.*

A husband conveyed certain lands to trustees to receive the rents and pay off a mortgage, and after payment of the mortgage to pay the balance into the hands of his wife during her life "for the use of her and (three children) . . . which said moneys shall be at the separate disposal of (wife) not subject nor liable to the power or control of (husband) or to his debts engagements or disposal."

*Held*, that the plaintiff who was the sole surviving child and was well up in years and unable to keep herself, was entitled to half the yearly income.

*Hislop*, for the plaintiff.

*Delamere*, Q.C., for the defendant.

MOSS, J. A.]

[June, 1.]

WELSBACH INCANDESCENT GASLIGHT CO. v. STANNARD.

*Security for costs—Appeal to Court of Appeal—Special order—Judicature Act, 1895, s. 77.*

Motion by the plaintiffs for a special order under s. 77 of the Judicature Act, 1895, for security for the plaintiffs' costs of the defendants' appeal to the Court of Appeal from the judgment of Boyd, C., at the trial, in favor of the plaintiffs, upon the ground of the defendants' inability to pay the plaintiffs' costs in case the appeal should prove unsuccessful.

*Held*, that, there being no reason to suppose that the defendants were not intending to prosecute their appeal in good faith and as they were conforming to the injunction obtained by the plaintiffs at an early stage, and as their ability to answer for costs had not been put to the test of an execution, and the proof of their alleged inability rested in great measure upon statements founded upon information and belief, it was not a case for ordering security.

*McCormick v. Temperance, etc., Co.*, 17 P.R. 175; *Confederation Life Association v. Kinnear*, cited in that case; *Donnelly v. Ames*, 17 P.R. 106; and *McDougal v. Copestoke*, 34 Sol. J. 347 referred to.

Application refused. Costs in the appeal.

*R. McKay*, for the plaintiffs.

*James Bicknell*, for the defendants.