

though, it may be, the sheriff has laid himself open to the charge of negligence in disposing of the property. I do not say that any such evidence has been given in this case inculcating the deceased officer. If such evidence can be given, this action will not bar a direct attack upon his sureties or his estate: *Watson v. McDonell*, 6 O. S. 450.

The action must stand dismissed with costs (one set), and declaration that the interest sold is to be vested in the wife of the plaintiff, subject to the charge for costs of construing the will and to the payment of her note held by the defendants the solicitors. It is for \$142, I think, which includes all defendants' costs against the husband's interest and sheriff's fees, etc.

NOVEMBER 11TH, 1907.

DIVISIONAL COURT.

PARKER v. TAIN.

Trusts and Trustees—Action of Ejectment—Counterclaim for Declaration of Trust and to Set aside Conveyance as Fraudulent—Improper Joinder of Causes of Counterclaim—Amendment—Election—Statute of Frauds.

Appeal by defendant Minnie A. Henders from judgment of *BOYD, C.*, ante 36, in favour of plaintiff in an action to recover possession of land, and dismissing the counterclaim of the appellant for a declaration that the plaintiff held the land in trust for the plaintiff, and in the alternative to set aside the conveyance of the land to the plaintiff by her son as fraudulent.

W. Proudfoot, K.C., for appellant.

W. J. Tremear, for plaintiff and defendants by counterclaim, was not called upon.

The judgment of the Court (*MEREDITH, C.J.*, *MACMAHON, J.*, *ANGLIN, J.*), was delivered by