

Held, that in case of sickness a trust was created which must be exercised by the executors, when called upon to do so, though they had a discretionary power to determine the amount necessary to be so applied, and that such sum was payable to the son's personal representatives.

James Bicknell, for executors. *R. U. McPherson*, for brothers and sisters. *Tucker*, for Alex. Wright.

HIGH COURT OF JUSTICE.

Master in Chambers.] COOKE v. WILSON.

[Jan. 21.

Examination for discovery—Appointment—Attendance on—Voluntarily taking oath—Refusal to answer questions—Liability.

Where a plaintiff, who had been served merely with an appointment for her examination for discovery, attended before a special examiner, voluntarily submitted herself for examination, and was sworn, she is precluded from setting up, as a ground for her refusal to answer questions submitted to her, that she had not been served with a subpoena.

J. A. Ferguson, for the motion. *J. W. McCullough*, contra.

Trial—Robertson, J.]

[Jan. 22.

SUTTON v. VILLAGE OF PORT CARLING.

Survey—Village lots—Authorization—Statutory requirements—Order in council—Resolutions of municipal council—By-law—Cost of survey—Assessment for—Proprietors interested.

The council of an incorporated village, upon its own motion, passed a resolution "That the council do write to the Lieutenant-Governor and Council to send a surveyor to finally settle disputes in regard to Port Carling streets." The clerk of the council thereupon wrote a letter, addressed to the Lieutenant-Governor-in-Council, stating that there had been great dissatisfaction with regard to the surveyor's lines of the village lots known as "The Bailey estate," composed of about 114 lots; that the lines had been run more than once since the original survey, and each time had been altered; that the village council had been applied to repeatedly to have the work done by an experienced surveyor, appointed by "Your honourable council" under s. 39 of R.S.O. 1887, c. 152, and to have the boundaries of the lots ascertained and marked; and asking the council to "Decide in favour of this. In answer to this the Assistant Commissioner of Crown Lands wrote as follows: "Referring to yours . . . asking that certain streets on which are about 114 lots known as "The Bailey estate" be re-surveyed, owing to the original survey having become obliterated, you understand the survey will have to be at the cost of the municipality,