

further invoices and vouchers asked for. The proofs in themselves were good and sufficient. Action was not brought until after 14th January.

Held, that this defence also failed; that the insured's absence and inability to furnish proofs was satisfactorily accounted for, and that the sixty days had expired before action brought, that the proofs must be deemed to have been completed on the 14th December, that proofs otherwise good and sufficient should not be considered as incomplete by reason of the failure to produce the further invoices and vouchers, the condition which referred to proofs merely stating that they are to be produced "if required and practicable."

The defendants further set up as a defence that there was, contrary to a condition of the policy, fraud and false swearing in the proofs of loss, but the evidence failed to establish it.

STREET, J.]

MURCHISON v. MURCHISON.

Marr'age settlement—One of beneficiaries taking possession—Subsequent appointment as trustee—Title by possession.

On 25th July, 1853, J. M., by marriage settlement, conveyed with other property the Clyde hotel property in Toronto to trustees, to permit J. M. to receive the rents for his life, excepting a life annuity to his wife, and on his death subject to such annuity to pay annuities of £60 to each of his two daughters, S. M. and C. A. M., and subject thereto to divide the balance of the rents annually into three equal shares, and to apply one share to the support and education of the children of a deceased son, W. M. M.; another share to a son, R. D. M., and the third share to his daughter, F. E. C., with limitations over. On 27th March, 1860, by a chancery decree W. and O. were appointed trustees in the place of B. and P., and the trust estate was vested in them. J. M. died on 12th March, 1870. W. M. M.'s children all died in J. M.'s lifetime, and their said one-third share having thereby reverted to J. M., he disposed of same by his will. On May 10th, 1882, judgment of the High Court was pronounced, directing the removal of W., the surviving trustee, that an account be taken, and appointing R. D. M. and R. C.

trustees; and also directing that all lands, etc., and all other assets, both real and personal, now vested in W. as such trustee, be vested in R. D. M. and R. C. upon the several trusts in the said settlement and will. On the death of J. M., R. D. M. had entered into possession of the Clyde Hotel property, and continued in such possession, receiving the rents to his own use without any question after the said judgment, and up to his death on 17th April, 1887. By his will and codicil, dated respectively 27th April, 1880, and 25th October, 1881, he devised to his executors his real estate, consisting of the Clyde Hotel property, upon trust, to pay the rents to his wife for life, and after her death to divide same equally among his children. In 1888, by three of his children, to have it declared that the Clyde Hotel was vested in R. C., the surviving trustee, under the trusts of the settlement, etc., and that an account should be taken.

Held, that the action could not be maintained, for that when R. D. M. took possession in 1870 he did not go in under the trustees, but adversely to them, and continued to so hold till his death; and the judgment of May, 1882, whereby R. D. M. was appointed one of the trustees, and trust estate vested in him could not be extended beyond its ordinary meaning so as to take away a property of which he had become the absolute owner and put it back into the trust estate.

Chancery Division.

ROBERTSON, J.]

Jan. 25.

MALONE v. MALONE.

Dower—Demand—Damages—Parties—Costs—Devolution of Estates Act, R.S.O., 1887, c. 108.

M. M. made his will April 13th, 1888, devising his farm to his two sons; appointed the defendants executors, and died May 21st, 1888. In an action of dower by the widow of M. M. against the executors, in which they set up that the sons were the tenants of the freehold and should be made parties, it was

Held, that since the Devolution of Estates Act, R.S.O., 1887, c. 108, s. 4, the devisees were not necessary parties.