

[Prac.]

NOTES OF CANADIAN CASES

[Prac.]

can do so without interfering with the proper support of my wife and family. Provided if any of my daughters die without issue the legacy . . . shall be divided among their surviving sisters.

The balance of the proceeds of said mortgage I give and bequeath to my said wife to have and to hold the same for her use and benefit, and for the use and benefit of the unmarried members of my family during the natural life of my said wife, after which my will is that the balance of proceeds of said mortgage still remaining be equally divided among my daughters then surviving.

*Held*, that the widow held in trust during her life for herself and her unmarried daughter, and that she was bound during her life to apply the proceeds of the mortgage for the proper support of herself and that daughter while unmarried, treating the principal and interest of the mortgage as a blended fund, and what remained was to be divided, and that the widow had the right to draw *bona fide* from the proceeds of the mortgage, even if it consumed the whole of the *corpus*.

A matter involving the proper construction of a will cannot be brought upon petition under R. S. O. c. 107, s. 35.

*Moss*, Q.C., for plaintiffs.

*J. Hoskin*, Q.C., for infant.

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PRACTICE.

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Q. B. Div. Ct.]

[May 27.]

MOXLEY V. CANADA ATLANTIC RAILWAY  
COMPANY.

*Affidavit of documents—Motion for better affidavit.*

The decision of ROSE, J. (*ante*, p. 12), was reversed on appeal.

The rule laid down in *Jones v. The Monte Video Gas Co.*, 5 Q. B. D. 556, may be accepted as the general rule on the subject of production of documents, but it should be read in conjunction with *The Attorney-General v. Emerson*, 10 Q. B. D. 191.

The affidavit of documents filed in this case stated that the defendants objected to the production of the documents in question be-

cause "they are in constant use in the business of the defendants, and are necessary for that purpose."

*Held*, that the affidavit was wholly insufficient, and that the books must be produced.  
*W. H. P. Clement*, for the appeal.

*Lefroy*, contra.

C. P. Division.]

[May 30.]

MALONEY V. MACDONELL ET AL.

*Trial—Evidence—Exclusion of witnesses.*

At the beginning of the trial of the action all witnesses were ordered out of Court, but the parties to the action were not requested to retire. Judgment having been given dismissing the action against the defendant P., his co-defendant M. entered upon his case and called P. as a witness. P. had remained in Court and heard the whole of the evidence adduced by the plaintiff.

*Held*, that the evidence of P. was improperly rejected, and a new trial was ordered with costs to be costs in the cause to the defendant.

*Aylesworth*, for the defendants.

*Cattanach*, for the plaintiff.

Rose, J.]

[June 1.]

WOODRUFF V. McLENNAN.

*Judgment under Rule 80, O. J. A.—Delivery of statement of claim.*

*Held*, that the practice of moving under Rule 80 O. J. A., for leave to enter final judgment after delivery of a statement of claim is not one to be encouraged, although in some cases it may be allowable.

Under the circumstances of this case such a motion was refused.

*Masten*, for the plaintiff.

*Holman*, for the defendant.