right at any time to require the plaintiff to take in payment of the money so lent the oil which the defendant had in the plaintiff's tanks at the market price at the time when the defendant so required the plaintiff to take the oil.

Held, that such a parol agreement could not be set up to alter the terms of the receipt which showed such loans were to be repaid in money, although the jury found the parol agreement to have been made. The Court, having all the facts before them, directed the verdict and judgment to be entered for the plaintiff for the full amount of his claim.

Osler, Q.C., for motion.

Meredith, Q.C., contra.

CHANCERY DIVISION.

Boyd, C.] [Dec. 23, 1885.

CHARTERIS v. CHARTERIS.

Will—Construction—Trust—Discretion—Failure of trustee—Reference to Master to work out a scheme.

A testator having disposed of one-third of the residue of his estate, real and personal, devised and bequeathed the remainder to J. C. to hold to him, his heirs, executors and administrators or assigns in trust for the benefit of the testator's two sisters, and with all reasonable expedition to convert the same into money and apply the same or the proceeds thereof for the benefit of the said two sisters, or otherwise distribute the same equally among his said two sisters as he should consider just. And he directed that his other trustees should not enquire into or interfere with such distribution as J. C. might choose to make among the said two sisters, except when their concurrence should be necessary for conformity.

J. C. predeceased the testator.

Held, that the above was in substance an imperative declaration of a trust of the whole for the equal benefit of the two sisters with a discretionary power reposed in the trustee as to its mode of execution, and the Court would undertake to discharge vicariously what could not otherwise be done, owing to J. C. predeceasing the testator, by referring it to the Master to ascertain the proper mode of carrying out the directions of the will.

Re Charteris, 25 Gr. 376, commented on.

Order made referring it to the Master to work out a scheme for the application and distribution of the fund.

S. H. Blake, Q.C., for the plaintiff.

C. R. Atkinson, Q.C., for the curator.

Maclennan, Q.C., for the infant defendants.

Clement, for the adult defendants other than the trustees.

Wilson, for the trustees.

Full Court.] [Dec. 23, 1885.

HICKEY v. STOVER.

Will—Ambiguity—Extrinsic evidence—Guardianship—Express trust—Statute of limitations.

A testatrix devised the south quarter of lot 20, con. 9, township of Raleigh to T., and east quarter of said lot to her two daughters.

It was sought to show that the testatrix had no other land than lot 20 in con. 8, Raleigh, and to make the will operate on this.

Held, that the judge below was right in rejecting evidence of extrinsic facts, and that even if it might have been shown that lot 20 in con. 8 was the only lot which the testatrix owned, the will could not operate to pass it.

The devise in the will was in its terms free from all ambiguity. It was not inherently absurd or insensible, not inconsistent with any context, and there was nothing else in the will which could be brought in to aid in its interpretation. The testatrix owned one thing and devised another, and evidence was not admissible to show that these were identical, or that one meant the other for the purposes of the will, nor was evidence of the intention of the testatrix admissible to explain the will containing, as it did, no latent ambiguity. To show that the testatrix did not own lot 20 in con. 9, was no evidence of an intention by her to devise lot 20 in con. 8.

Held, also, that though a guardian by appointment of the Surrogate Court was an express trustee during the minority of the ward, so that she could not acquire title against him by possession of his lands, yet the guardianship ended, and the trust ceased with the ward's minority, and since after that the guardian