been transferred by order of Teetzel, J., dated 5th November, 1906.

The plaintiff appeals against both reports. The appeal upon the sceond action was argued first and may be considered first. It is objected that the Master had no power or authority to incorporate in his report in the sceond action the plaintiff's claim in action No. 1. That claim, it is alleged, was not dealt with in the pleadings or evidence in action No. 2, and the Master's action is tantamount to a consolidation of the two actions, a proceeding said to be contrary to the rules of practice.

Action No. 1 was, it is argued, against the original defendant as executor of his deceased brother. But in form, at least, if not in substance, it was against D. J. McCarthy personally.

Action No. 2 was in form and substance against the original defendant personally. Both actions as revived are against the same defendant in the same capacity; that is, as executrix of the defendant in the original actions. In both actions the original defendant set up—as I think he had a right to do—the same counterclaim. As allowed by the Master that counterclaim exceeded the amount claimed in the first action; and, in view of that fact and circumstances disclosed in the evidence, some of which I shall advert to later, the learned Master properly held, I consider, that the first action wholly failed, and was right in dismissing it with costs.

The Master charged against the plaintiff in the second action the balance of the counterclaim remaining after credit had been given to the plaintiff for the legacy of $1,000, originally due to him, but satisfied, as the Master found, by the payments made by the defendant to or on behalf of the plaintiff. It was, in my opinion, open to the Master, under the terms of the reference for trial, to settle and adjust between the parties the matters in dispute between them in both actions; and, unless the Master was wrong in regard to the question of the conversion of the shares, and in his allowance of certain disputed items, his findings are not, I think, open to question. There is no rule of practice of which I am aware forbidding what he has done. Moreover, to hold the plaintiff entitled to recover $1,000 from the defendant, when, upon the findings, he owes her—if that $1,000 is not taken into account—no less than $3,194, is a manifest injustice. If, therefore, the account of the de-