

2. The Referee had no jurisdiction, under Rule 449 of the King's Bench Act, or otherwise, even with the consent of the parties, to make an order for the entry of judgment for the defendants after the action had been entered for trial; and that such a judgment can then only be pronounced by a judge sitting in Court. The Referee has power to dismiss an action by the consent of the parties. That would be a matter relating to the conduct of the action, and is covered by Rule 442 (d). But entering a judgment for the defendants is an adjudication and final disposition of the cause of action involved, and is widely different from a mere dismissal of the action.

3. The judgment entered in the action was unauthorized and unsupported by any order or pronouncement of the Court, and could have been set aside by the Referee on the application before him, and should now be set aside on this appeal. No costs, as the appeal succeeded only on grounds not taken before the Referee.

Elliott, for plaintiffs. *Robson*, for Harvey. *McKerchar*, for Robinson.

Province of British Columbia.

SUPREME COURT.

Full Court. KASER v. McQUADE. (April 18, 1904.)

Contract—Consideration of marriage—Ante-nuptial agreement by woman to make future husband her sole heir—Will made after excluding husband—Effect of—Specific performance—"Voluntarily"—Meaning of—Costs payable out of estate.

Appeal from judgment of DRAKE, J., dismissing the action.

A woman, in consideration of a man marrying her, promised him that she would make him her sole heir: he married her, and after marriage, in acknowledgment of the ante-nuptial contract, she signed a writing stating: "I voluntarily promised . . . before and after marriage that I would make him my sole heir . . . by virtue of this contract he is my sole heir." She died having (after the acknowledgment) disposed of her estate by will to the exclusion of her husband:—

Held, that the ante-nuptial agreement was a binding contract on the part of the woman to leave by will her property to her husband, and should be specifically performed; and that "voluntarily" in the acknowledgment meant "of her own free will."