Held, affirming the decision of the court below, 2 Man. L. R. 257, that the money having been paid to the sheriff on an execution duly issued must be paid to the execution creditors, and a third party could not claim it.

Semble, that the lands were neither "taken or sold" within the meaning of the Interpleader Act, and the proceedings were therefore improper.

Appeal dismissed with costs.

McCarthy, Q.C., for appellant.

Robinson, Q.C., for respondent.

CHANCERY DIVISION.

Proudfoot, J.] [Oct. 23.

ARCHER v. SEVERN.

Will—Specific bequest of a mortgage indebtedness—Right of executors to refuse to discharge until other indebtedness paid—Assent of executor to specific legacy—Administration proceedings.

A testator by his will directed his executors to cancel and entirely release the indebtedness of his son, W. S., upon and by virtue of a mortgage to the testator, such release to operate and take effect immediately on and from the said testator's death. In an action for the administration of the testator's estate W. S. claimed the discharge of the mortgage, but the executors contended that they were not bound to give it until W. S. paid the amount of his other indebtedness to the estate. The master found in favour of the executors. On appeal from the master it was

Held, that the executors were not entitled to insist on payment of the other indebtedness before discharging the mortgage.

Held, also, following *Northy* v. *Northy*, 2 Atk. 77, that although at law the assent of the executor is necessary to the vesting of a specific legacy, in equity he is considered as a bare trustee, and if he refuse his assent without cause he may be compelled to give it, and that here the executors' refusal was without cause.

Held, also, that a decree in an administration suit, although it may enure to the benefit of all creditors of an estate, does not prevent the statute of limitations from running against debtors to the estate.

Held, also, that a clause in the answer of W. S. expressing his willingness that the will should be construed by the court, and the rights of the parties thereunder determined had not the effect of waiving any right that might have accrued to him during the progress of the suit.

W. H. P. Clement, for the appeal.

S. H. Blake, Q. C., and *H. Cassels*, contra.

Ferguson, J.] [Nov. 29.

HOLMES v. MURRAY.

Will—Devise—Republication of will by codicil—Mortmain—R. S. O. c. 216—38 Vict. c. 75 (O.).

A testator made his will, dated February 2, 1884, in which was contained the following devise:—"To the congregation of Burns Church. . . . I bequeath the sum of $2,000, to be used by the trustees of the said church towards the purpose of purchasing land for a glebe, in any place that they may judge suitable, and for erecting thereon a manse, all for the use of the said congregation through their trustees forever." He added two codicils on September 21st and December 5th, 1885, respectively, and died on the 27th of December following.

Held, that as nothing appeared in the codicils to show a contrary intention, their executions operated as republications of the will at their respective dates, and that the will having been so republished within six months of the death of the testator the gift, notwithstanding the provisions of R. S. O. c. 216, and 38 Vict. c. 75 (O.), was void.

Oliver, for the plaintiffs, the executors.

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

Ferguson, J.] [Nov.

RE ONTARIO LOAN AND SAVINGS CO. AND POWERS.

Will—Devise—Appointment—Estate—R. S. O. c. 109.

A. by his will devised as follows:—"I give and bequeath to my nephew B., and C., his wife, (describing the land) to their use for the term of their natural life, and at their decease