

[Prac. Cases.]

NOTES OF CANADIAN CASES.

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brought twenty-five dollars more than the applicant bid.

An application, by the purchaser, to have his deposit repaid to him on the ground that there had not been any loss to the parties was refused.

*Armour*, for purchaser.

*H. Cassels*, for plaintiff.

*Hoyles and Moffat*, for defendant.

*J. Hoskin*, Q.C., guardian *ad litem*.

Boyd, C.]

[Nov. 22.]

ROSENSTADT V. ROSENSTADT.

*Adultery—General charge—Particulars.*

This was an alimony suit. Paragraph 12 of the statement of claim was as follows: "The plaintiff alleges and charges adultery on the part of the defendant as a further ground for relief in the premises."

The Master at Hamilton refused to make an order for particulars.

On appeal,

BOYD, C., ordered that plaintiff give within one month particulars of the acts of adultery intended to be proved under the general charge, and be limited to those at the hearing, and that in default of such particulars no evidence was to be given under the general charge.

Costs of application and appeal to be costs in the cause.

*Mackelcan*, Q.C., for plaintiff.

*H. Cassels* for defendant.

Boyd, C.]

[Nov. 22.]

CHADBOURNE V. CHADBOURNE.

*Will—Legal heirs—Mixed devise—43 Vict., c. 14, sec. 2.*

A testator left three children, and four grandchildren, the issue of two other of his children who pre-deceased him.

The will was dated 28th April, 1880, and subsequently the testator died. He disposed of the residue of his estate as follows: "I give and bequeath the remainder of my personal and real estate to my legal heirs, including my daughter, Jemima Woodside, to be divided equally amongst them."

On the reference in a partition suit, the Master divided, under this clause, the residue into seven equal parts on a *per capita* principle.

*Held*, on appeal, that a division *per capita* and not *per stirpes*, was correct.

43 Vict., c. 14, s. 2, which defines the word "heirs" in a devise of "real estate," does not apply, as this is a devise of a "mixed fund" to "legal heirs." Legal heirs means heirs legally born: *Harris v. Newton*, 25 W.R. 228.

Costs out of the estate, as the appeal was proper on account of the importance of the question.

*Cattanach*, for appeal.

*J. Hoskin*, Q.C., contra.

Boyd, C.]

[Nov. 22.]

O'DONOHUE V. WHITLEY.

*Appeal—Sect. 33, O. J. A.*

Certain bills of costs were filed in the Taxing Master's office amounting in all to \$250. On taxation they were reduced to \$187.

The plaintiff applied for leave to appeal under sect. 33, O. J. A., contending that the matter in controversy exceeded \$200.

The Master in Chambers refused leave to appeal to the Court of Appeal under the above section. On appeal,

*Held*, that the matter in controversy for the Court of Appeal was, whether the appellant (the plaintiff) was liable to pay \$187, or anything, as no greater sum than that could, whatever became of the appeal, be recovered against him.

*Appeal dismissed with costs.*

*Howells*, for appellant.

*Hoyles*, contra.

Patterson, J. A.]

[Nov. 24.]

MCCRAE V. WHITE.

*Bond on appeal—Time—Filing.*

Judgment was delivered by the Court of Appeal on the 24th March last, and on the same day application was made for leave to appeal, the case being one in which, under O. J. A., leave to appeal was necessary. The application was considered, and leave to appeal granted on 1st May following. The bond was filed on the 22nd May.

*Held*, by PATTERSON, J.A., after consultation with BURTON, J.A., that the delay being the act of the Court the time for filing the bond must