

STREET, J.]

[May 16.]

RE CHILLIMAN

Infants—Custody of—Religious faith.

C. died in 1892, leaving him surviving his widow and five children. By his will he appointed J. as executor and guardian of his children, to whom probate was granted. The children lived with their mother until her death in 1894, when J. took charge of them and had the custody of them for a few days, when they were clandestinely taken away by F., the wife's sister, who claimed she was entitled to their custody under a document made by the wife, not under seal, purporting to place the children and her property in her charge. C. and J. were Protestants, while F. was a Roman Catholic, and the object of appointing J. as guardian was that the children should be brought up in their father's faith. S. F. was not possessed of any means to support the children, while J. had made arrangements to have the children placed in an institution where they would be brought up in their father's faith. The custody of the children under the circumstances was granted to J.

The document made by the wife was not subject to probate, not being of a testamentary character, as it purported to take effect immediately; nor did it take effect as an appointment under R.S.O., c. 137, s. 14, not being under seal; but even were it held to be a valid appointment under said section, the court, under the powers conferred by s. 15, would direct that the children should be placed in the institution in question.

The inference, in absence of evidence to the contrary, is that the children are to be brought up in their father's faith.

F. E. Hodgins for the applicant.

Murphy, Q.C., contra.

*Practice.*STREET, J., }
In Chambers. }

[Sept. 10.]

HAYES v. ELMSLEY.

Dismissal of action—Non-compliance with judgment—Specific performance—Payment of purchase money.

This was an appeal by the defendant from an order of the Master in Chambers made upon an application by the defendant to dismiss the action after judgment in favour of the plaintiff (purchaser) for specific performance of a contract for the sale and purchase of land. The case was appealed to the Supreme Court of Canada, and the judgment there limited a time in which the plaintiff was to pay the purchase money, less his costs, and receive a conveyance of the land. The purchase money not having been paid within the time limited, the defendant moved to dismiss the action, and the Master made an order dismissing it unless the plaintiff should pay the money within ten days. From this order the defendant appealed.