

it in on the trial, in which she states that plaintiff should deduct \$250 from his account of \$543. My deductions from the \$543 amount to only \$192. . . .

Plaintiff must get costs.

This is a case which, under the circumstances, defendant, representing the estate, was quite right in defending. She was not in a position to know what amount to pay into Court. Without having any jurisdiction, I can only express the opinion that she should be entitled to charge the costs, not only what she must pay plaintiff, but her costs of defence, against the estate of Sarah White.

Judgment for plaintiff against defendant as executrix, and payable out of the estate, for \$448.62 with costs.

CARTWRIGHT, MASTER.

OCTOBER 25TH, 1906.

CHAMBERS.

SHEARD v. MENGE.

Dismissal of Action—Want of Prosecution—Cause of Action—Abatement—No Question but that of Costs Remaining.

Motion by defendant to dismiss action for want of prosecution.

J. P. Eastwood, for defendant.

E. W. J. Owens, for plaintiff.

THE MASTER:—This action is for an injunction and damages in respect of injuries alleged to have been caused to plaintiff's land by a drain, for which defendant was alleged to be responsible.

It came on for trial on 17th and 18th September, 1901, before the Chancellor. Judgment was reserved, and on 25th October, 1901, he directed plaintiff to amend so as to have all owners interested in the drain in question brought before the Court, and reserved "costs already incurred to be disposed of by the trial Judge."

Since that time nothing has been done. In the meantime plaintiff has parted with his interest in his land, and defendant has lost his land by foreclosure.