

FOXWELL v. KENNEDY—MASTER IN CHAMBERS—JAN. 11.

*Pleading—Statement of Claim—Joinder of Causes of Action—Will—Executrix—Maintenance—Parties.*]—Motion by the defendants to strike out paragraphs 15 to 23 of the statement of claim, before delivery of the statement of defence, as being a misjoinder of causes of action. This was one of several actions arising out of the will of David Kennedy. The facts in regard to the will and the estate as they existed in April, 1909, are stated in *Kennedy v. Kennedy*, 13 O.W.R. 984. It was there said that Gertrude Maud Foxwell, a granddaughter of the testator, and named in his will as an executrix, had renounced probate. She was the plaintiff in this action, and asked to have her renunciation set aside, to be declared a trustee and entitled to share in the management of the estate, and to have the will construed by the Court, especially as to the rights given her thereunder for maintenance, and also to have a sale of the whole or part of the residue arranged by James H. Kennedy set aside. There were ten defendants. In paragraph 15 to 17 of the statement of claim the plaintiff set out the devises made to her in the will and what she claimed to be entitled to under the words "all necessary maintenance" to be furnished to her by James H. Kennedy while she resides in the house given to him, which maintenance was made a charge on "the said residence premises." In the next four paragraphs it was alleged that the plaintiff was obliged to leave the house in consequence of the misconduct of an uncle of J. H. Kennedy, with which he refused to interfere, and she asked that he should be compelled to restrain the uncle from interference with the plaintiff's use and occupation of the roof bequeathed to her and carry out the provisions as to "all necessary maintenance," as she understands them, or as they may be interpreted by the Court, or else that, in lieu thereof, he be directed to make her "a proper cash allowance." In the 23rd paragraph the plaintiff submitted that under the lien given by the will "the residence premises" should be sold to carry out the intention of the testator on her behalf. These paragraphs were attacked as being in violation of Con. Rule 235; and *Holmsted and Langton's Judicature Act*, 3rd ed., p. 431, and cases there cited, were referred to. The Master said that there were claims for relief: (1) to have the plaintiff restored as an executrix; (2) to have the proposed sale of the residue set aside; and (3) to have the whole will interpreted by the Court; and these causes of action were not improperly joined. He referred to sec. 57(12) of the *Judicature Act*; *Cox v. Barber*, 3 Ch. D. at p. 368; *Evans v.*