

Barker, J.]

MILLS v. PALLEN.

[Dec. 20, 1898.

*Receiver—Bankruptcy of trustee—Delay in application—Costs.*

The defendant was the sole acting trustee of his father's estate. Two years after the estate came into the defendant's hands the plaintiff brought suit for the payment to her of a claim alleged to be due her by the deceased testator, and the appointment of a receiver of the estate. The plaintiff's claim was disputed by the defendant and on being litigated in an action at law, was found to be considerably less than the amount claimed by the plaintiff. The appointment of a receiver was opposed by all others interested in the estate. In the will the ground put forward for the appointment of a receiver, was the alleged bankruptcy of the defendant. The defendant, however, was in no worse financial position than when he took over the estate, and the plaintiff had at that time a knowledge of his business affairs, and made no objection to his acting as trustee. The plaintiff's claim was paid after its amount had been determined in the action at law.

*Held*, that plaintiff's application should be refused with costs.

*Tweedie*, Q.C., for plaintiff. *Robert Murray*, for defendant.

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LEONARD v. LEONARD.

[Dec. 20, 1898.

*Will—Construction—Absolute devise—Defeasance.*

A testator devised real and personal estate to his wife absolutely to enable her to maintain a home for herself and children until they should respectively attain the age of twenty-one years. The residue of the estate was devised and bequeathed to trustees for his children. The will then provided that the devise and bequest to the testator's wife should be in full satisfaction and lieu of dower "and should she marry again the property in such event so devised to her as herein stated, shall vest in my said executors and trustees for the benefit of my said sons as hereinbefore expressed."

*Held*, that the widow took an absolute gift, but that the proviso was not inoperative as being repugnant to the gift to her, and that in the event of the widow's marriage the personal as well as the real estate would be divested out of her.

*Allen*, for the widow. *A. I. Trucman*, for the children. *Hanington*, Q.C., for the trustees.

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POIRIER v. BLANCHARD.

[Dec. 23, 1898.

*Contempt—Breach of injunction—Form of motion.*

On breach of an injunction order the party in contempt should not be called upon to shew cause why an attachment should not issue against him, or to shew cause why he should not stand committed. The motion ought to be that he shall stand committed upon notice to him that the court will be moved for that purpose.

*Gilbert*, Q.C., for application. *Campbell*, contra.