

thereof by the trustees within three years after the widow's death can these pecuniary legacies be paid.

Neither of these legacies could have been sued for and recovered during the widow's life, and there being no default, and interest being given for delay in payment, the same cannot be exacted before the time at which by direction of the testator there would be a fund out of which the legacies could be paid. Upon this question I think the case governed by *Re Scadding*, 4 O. L. R. 632.

I therefore declare that interest on the said two legacies should be computed only from the time the trustees realized upon the real estate.

The cost of all parties should be paid out of this estate.

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FALCONBRIDGE, C.J.

SEPTEMBER 26TH, 1903.

CHAMBERS.

O'CONNOR v. O'CONNOR.

*Jury Notice—Leave to File—Interpleader Issue—Equitable Issue—Jurisdiction of Court of Chancery.*

Appeal by plaintiff from order of Master in Chambers (ante 737) refusing plaintiff leave to file a jury notice.

T. F. Slattery, for plaintiff.

W. B. Raymond, for defendant.

FALCONBRIDGE, C.J.—The issue is whether the defendant is entitled absolutely to hold the beneficiary certificate and the money payable thereunder, or whether he holds the certificate only as security for money lent, and therefore is trustee for plaintiff of the balance. This is within the jurisdiction of the old Court of Chancery, and therefore ought to be tried by a Judge without a jury. Appeal dismissed with costs to defendant in any event.

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CARTWRIGHT, MASTER.

SEPTEMBER 26TH, 1903.

CHAMBERS.

POSTLETHWAITE v. McWHENNEY.

*Writ of Summons—Service out of Jurisdiction—One Defendant in Jurisdiction — Contract—Breach—Cancellation—Injunction—Parties—Trustee—Rule 162.*

On 24th June, 1903, the plaintiff obtained an ex parte order for leave to issue a writ of summons for service out of