

cese of Hamilton," the names being essentially different from the corporations they respectively compose and represent, the bequests must be treated as intended for the individuals described in the will; that the bequests were subject to a trust that the money should be applied for the education of young men for the priesthood; that the purpose for which the legacies were given was a charitable use; and the money being derived from the sale of land, the legacies failed.

That the money directed to be applied to these legacies went to augment the residuary gift of the particular fund out of which it was directed to be paid, and not the general residue of the estate.

That as the testator directed the land to be sold within three years from his death, the legacies should bear interest from the date when the lands should have been sold.

That as there was no special devise of the real estate, but only a direction to the executors to sell and pay legacies, the land and rents arising therefrom belonged to the widow, Alice Lynch, under the general residuary gift to her of all the estate not otherwise disposed of, and the executor had no power to lease, because he had no estate in it.

That the widow was not bound to elect between her dower and the benefits conferred by the will.

And that as the litigation was connected with the provisions of the will relating to the land, the costs should come out of the proceeds of its sale.

E. D. Armour, Q.C., for the plaintiff.

J. Hoskin, Q.C., for the infants and others in the same interest.

F. A. Anglin for the Archbishop and the Roman Catholic Episcopal Corporation of the Diocese of Toronto, Mary Lynch, and Mary Egan.

E. Furlong for the Bishop and the Roman Catholic Episcopal Corporation of the Diocese of Hamilton.

C. E. Hewson for Alice Lynch.

Practice.

Q.B. Div'l Court.]

[March 3.]

HURD v. BOSTWICK.

Pleading—Rule 419—Reply—Inconsistency—Refusal of judge to try action—Discretion—Costs—Divisional Court.

By their statement of claim the plaintiffs alleged themselves to be creditors for wages of two of the defendants, and they sought relief against the third defendant only as having obtained certain assets from the other two, either fraudulently or upon a trust to pay the plaintiffs' claims. In their reply, they set up that they were creditors of the third defendant himself, upon the ground that he was really the person who hired them. There was no subsequent pleading.

Held, that the reply was a direct violation of Rule 419, and that the trial judge was within his right in refusing, in his discretion, to try the action until