

[Chan.]

NOTES OF CASES.

[Chan.]

veyance cases, and for these purposes the usual reference to the master was directed.

*Harding* for plaintiff.

*Idington*, Q.C., and *McMillan* for defendant.

Blake V. C.]

[Feb. 26]

MCARTHUR V. PRETTIE.

*Appeal from Master—Taking further evidence*

On an appeal from the Master which turned upon the credibility and weight of evidence, the Court, though not satisfied as to the actual facts of the case, could not say that the Master had erred in his finding and therefore dismissed the appeal with costs; giving at the same time liberty to the appellant to examine the witnesses again at the next sittings before the Judge who had heard the appeal, in order to enable him to dispose of the matter with greater satisfaction to himself, in which case he reserved the costs till after such evidence was taken.

*Hodgins*, Q. C., for plaintiff.

*Boyd*, Q. C., for defendant.

Proudfoot V. C.]

[March 9.]

WEBSTER V. LEYS.

*Demurrer—Style of cause—Married women—Administration suit.*

In a bill the style of cause named several females as being severally wives of their respective husbands, but the stating part of the bill did not allege that they were married; a demurrer on the ground that their husbands were not named as parties was overruled with costs.

The bill shewed that the testator had appointed four executors, three of whom had died, but stated that those so dying had never received any portion of the assets. In a suit for the administration of the estate a demurrer *ore tenus* on the ground that the representatives of such deceased executors should be parties was also overruled with costs.

*Boyd*, Q. C., and *Black* for plaintiff.

*Moss*, and *Kingstone*, for defendant.

Proudfoot, V. C.]

[March 9.]

MCGARRY V. THOMPSON.

*Will, construction of—Widow—Election—Dower—Maintenance—Conversion of realty into personalty.*

A testator gave and devised all his real and personal estate to trustees to sell the realty and collect and get in the personalty, and, after paying debts, &c., to invest the proceeds of sale in their names upon trust, to pay annual incomes to his two sons in equal moieties—they maintaining their mother during her life—and after the death of each of said sons the trustees were to hold one moiety of the trust moneys upon trust to pay and divide and transfer same between and amongst such of their children as should be living at his decease, and the issue of such children as should be dead, as tenants in common, in course of distribution, according to the stocks, and not to the number of individual objects, and so that the issue of any deceased child should take, by way of substitution amongst them, their share or respective shares only, which the deceased parent or parents would have taken.

*Held*, (1), that the widow was not put to her election, but was entitled to dower as well as to the provision made for her by the will; and it being alleged that the sons had not provided for her maintenance, a declaration was made that she was entitled to such maintenance, and a reference was directed to find what would be a proper sum for that purpose; (2), that a complete conversion was effected by the trust for sale in this will, and the interests of the sons were to be ascertained, as if the will consisted of personal estate only; and that, therefore, the sons took only life estates therein, and one of the sons having died without children, there was an intestacy as to his share, subject, however, to a proportion of the charge for maintenance of the widow.

*J. H. McDonald*, for plaintiff.

*Arnoldi*, for defendant.

Proudfoot, V. C.]

[March 9.]

VANKOUGHNET V. DENISON.

*Demurrer—Covenant against building—Injunction.*

The owner of real estate in effecting a sale of a portion thereof covenanted with the purchaser that he would retain a certain square