

and also that divorce proceedings had been taken against him. The defendants pleaded justification to the whole, and added two clauses to the same paragraph of his statement of defence, one of which related to the first charge and the other to the second. The first of these clauses was as follows: "The plaintiff was obliged to leave the army on the ground that he had cheated at cards, and stories of the peculiar character of the plaintiff's card-playing and of his having been cashiered from the army for cheating at cards were in circulation in the city of Vancouver." The plaintiff applied for an order striking out both these added clauses, but the application was refused on the ground that the defendants were entitled to plead them as particulars of the defence of justification. There was no appeal from this order, but the plaintiff amended (by leave) by striking out so much of his complaint as related to the divorce proceedings, and the defendants then struck out of their defence the second clause, relating to the divorce proceedings. An application was then made to strike out the first clause, that relating to the plaintiff being cashiered from the army, and was refused by the Master and by a Judge in Chambers on appeal.

*Held*, per FALCONBRIDGE, C.J., that the plaintiff was not prejudiced by the clause; and, moreover, approving *Dodge v. Smith*, 1 O.L.R. 46, that a second appeal was not to be encouraged in a case of this kind.

Per STREET, J., that the matter of the second application was *res judicata* by the order made on the first application and not appealed against.

C. S. MacInnes, for plaintiff. J. B. Clarke, K.C., for defendants.

Boyd, C.] IN RE MCCLELLAN, HALL v. TRULL. [Nov. 4.]

*Will—Construction—Devise—Estate—Rule in Shelley's Case.*

Motion under Rule 938 for an order declaring that under the true construction of the will of Jane McClellan the applicant Mary Hall is a devisee of an estate in fee simple in the lands of the testator. The devise was as follows: "I give and devise to my daughter Mary . . . the following described parcels of real estate to be held and controlled by her during her natural life, and after her death to be divided in a legal manner among her heirs."

*Held*, that the devisee took an estate in fee-simple, under the rule in Shelley's Case.

Grierson, for applicant. George Bell, for executors. Hartcourt, for infants.

Boyd, C.] MINNS v. VILLAGE OF OMEMEE. [Nov. 5.]

*Way—Non-repair—Opening in street—Accident to foot-passenger—Liability of municipal corporation—Non-feasance—Limitation of actions—Trap-door—Want of guard—Master and servant.*

Two servants of the defendant G. were engaged in their master's business in unloading and storing a cask of beer in the cellar of his house by