

it was held affirming the judgment of the very learned President of the Probate Division that the codicil was entitled to probate. Fry, L.J., succinctly states the grounds of the decision as follows:—"The codicil propounded is *ex facie* perfectly regular as regards all the formalities of signature and attestation. The presumption *omnia rite esse acta*, therefore applies to the codicil. But the conduct of the testator both in the preparation of the codicil and in the calling together of his witnesses, shews an anxious and intelligent desire to do everything regularly. That fact strengthens the presumption. That presumption is not, in my opinion, rebutted by the evidence of the two witnesses who think that the testator did not sign in their presence, for these witnesses were somewhat nervous and flurried on the occasion, and were accordingly confused and forgetful in the witness-box. They were witnesses about whose honesty the learned President of the Probate Division entertained no doubt, but on whom he, who saw and heard them, felt that he could not rely to rebut the presumption which arises from the admitted facts of the case."

Cotton, L.J., though thinking that he would himself have come to a different conclusion on the evidence, yet having regard to the principles on which the Court acts on appeals as to questions of fact, he did not feel able to overrule the decision of the judge of first instance who had seen the witnesses.

REPORTS.

ONTARIO.

(Reported for the CANADA LAW JOURNAL.)

MASTER'S OFFICE.

HUGHES V. REES.

Res judicata—Pleading—Estoppel—Allowance to trustee under a void instrument—Husband and wife—Agency—Maintenance of children.

Where a party does not plead a prior judgment in bar by way of an estoppel before a judgment directing a reference to the Master, he leaves the whole matter open, to be enquired into on the evidence.

The Master has no jurisdiction to amend pleadings after judgment; nor could he give effect to a statement filed in his office raising a defence which ought to have been set out in the pleadings.

A trustee who has been induced by a settlor to accept a trust under a deed void by the law of the settlor's domicile is entitled to be re-imbursed all his charges and expenses incurred in the execution of the trust.

A clause indemnifying the trustee is infused into every trust deed; and the statute R. S. O. c. 107 s. 3, does little more than what Courts of Equity do without any statutory direction.

Where a husband turns his wife out of his house he sends her forth as his agent to pledge his credit for the necessities of life suitable to her position.

When a father could have obtained possession of his children by *habeas corpus*, but does not do so, he consents to be liable to the person in whose case the children are, for their support and maintenance.

[Mr. Hodgins, Q.C.—June 7.]

This was a reference under a judgment reported in 5 Ont. R. 654. The material facts appear in the judgment.

S. H. Blake, Q.C., and Morphy, for plaintiff.

MacLennan, Q.C., and Kingsford, for defendant.

THE MASTER IN ORDINARY.—The judgment directs an enquiry whether the plaintiff has any valid claim against the defendant for the maintenance and support of the defendant's wife and children; and also, whether the plaintiff has been put to any other expenses or charges in respect of the support of the supposed trust deed—which, by the judgment, had been declared invalid.

Against the claim made by the plaintiff, the defendant contends:—1st. That the question of the personal liability of the defendant to the plaintiff for the support of the defendant's wife is *res judicata* by virtue of a judgment against the plaintiff in an action brought by the plaintiff against the defendant for the same claim in the Superior Court of Quebec: *Hughes v. Rees*, 5 Quebec Leg. News 70. 2nd. That the trust deed being void,