

Cayuga and 5 others going from London to Cayuga would be greater than that of 5 going west from Jarvis to London, where the plaintiffs and their witnesses reside.

The motion must be dismissed with costs in the cause. It is always open to the trial Judge, on an application by defendants, to deal with the costs of witnesses as suggested in *McArthur v. M. C. R.*, 15 P. R. 77.

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HON. SIR G. FALCONBRIDGE, C.J.K.B.

MAY 26TH, 1913.

SHAW v. TACKABERRY.

4 O. W. N.

*Executors and Administrators—Action to Set Aside Sale—Release—Estoppel—Accounts—Failure to Appeal from Order as to—Costs.*

FALCONBRIDGE, C.J.K.B., dismissed an action for an accounting in respect of plaintiff's deceased husband's estate and to set aside a sale of certain real estate, holding plaintiff estopped by her acts from maintaining the action.

Action for a declaration that defendant Martha A. Russell be declared a trustee for defendant J. W. Tackaberry, in regard to certain lands in question in this action, and that both defendants be declared liable to account to plaintiff for *mesne* profits thereof and for an account.

H. D. Smith, and McNiven, for plaintiff.

O. L. Lewis, K.C., for defendant Tackaberry.

S. B. Arnold, for defendant Russell.

HON. SIR GLENHOLME FALCONBRIDGE, C.J.K.B.:—As to the attack which the plaintiff makes on the sale of the real estate in the village of Merlin, she is out of Court, by reason of a release (Exhibit 20), which she gave to the executors, and wherein she granted to them all her estate, right, title, or interest, whether by way of dower or otherwise in said lands.

As regards that branch of her case in which she attacks the adjudication by the County Judge of the claim of defendant Tackaberry against the estate, it is to be observed in the first place that she was represented by counsel when the learned Judge assumed to hear and determine the matter. His order or judgment stands unappealed from, and it is