

DIARY FOR APRIL.

1. MonCounty Court Sittings for Motions begin.
2. TueCounty Court Non-Jury Sittings, except in York.
6. Sat.....County Court Sittings for Motions end.
7. Sun5th Sunday in Lent. Passion Sunday.
14. Sun6th Sunday in Lent. Palm Sunday.
15. MonCounty Court Non-Jury Sittings in York.
19. Fri..... Good Friday.
20. Sat.....Last day for Primary Notices.
21. SunEaster Sunday.
22. MonEaster Monday.
23. TueSt. George's Day.
25. ThuSt. Mark.
28. Sun1st Sunday after Easter. Low Sunday.
30. TuePrimary Examination.

Reports.

ONTARIO.

HIGH COURT OF JUSTICE.

CHANCERY DIVISION.

Reported for THE CANADA LAW JOURNAL.

GRAHAM V. DEVLIN.

Receiver—Share under will—Precatory trust.

This was a motion to continue the Sheriff of Toronto as receiver of the defendant's share in the estate of his father, under the will of the latter, which devised and bequeathed the testator's realty and personalty to his wife, and expressed a wish that she should divide the estate amongst their children, of whom the defendant was one, before her death.

Held, that the motion was practically one to construe a will, which could not be done on motion.

Held, also, that it was not shown that there was any estate that could be received.

[FERGUSON, J. March 12.]

Motion by the plaintiff, who had obtained judgment against the defendant, for an order continuing the Sheriff of Toronto as receiver of the share of the defendant in the estate of his father, under his will.

The clause of the will under which it was claimed the defendant took an interest was as follows:—"I give, devise and bequeath to my beloved wife Eleanor Devlin all my ready money and securities for moneys that I may die possessed of, for her sole use and benefit, and it is my will and wish that my wife Eleanor Devlin shall divide the real estate

and money and securities for money amongst our surviving children before her death."

The material filed by the plaintiff showed that he had obtained judgment for \$1,525.40 debt and \$222.66 costs against the defendant, and had placed writs of fi. fa. in the sheriff's hands, which were unsatisfied; that the defendant had been examined as a judgment debtor and had deposed that he was unable to satisfy the judgment and had no property. The plaintiff swore that the only way he had of realizing his judgment was by the appointment of a receiver to receive the share of the defendant under the will of his father William Devlin.

It also appeared that the defendant was one of seven children of William and Eleanor Devlin, whose estate amounted to \$5,000 or \$6,000, and that the defendant had received no part of the estate.

J. M. Clark, for the plaintiffs, referred to *Le Marchant v. Le Marchant*, L. R. 18 Eq. 214; *Re Hutchings*, W. N. 1887, p. 217; *Lewin on Trusts*, 8th ed., pp. 130, 387.

C. J. Holman, for Eleanor Devlin, referred to *Re Diggles*, 29 Ch. D. 253; *Re Adams*, 27 Ch. D. 398; *Jarman on Wills* (4th Eng. ed.), p. 396; *Missouri Bank v. Raynor*, 7 App. Cas. 321; *Lamb v. Eames*, L. R. 10 Eq. 267.

No one appeared for the defendant or the executors of his father, though duly notified.

FERGUSON, J.—This application asks more than any application hitherto. I am really asked to construe a will in a way that at present does not seem to me to be the meaning of it, to make out that the defendant has even a prospective estate of any value whatever. The will cannot be construed upon a motion of this kind at all, I think. The application, in my opinion, fails, for the reason that it is not shown that there is any estate that might or could be received, and the court will not appoint a receiver in a case where it cannot be perceived or it does not appear that any good purpose will be served by so doing. See *Smith v. Port Dover, etc., Railway Co.*, in appeal, 12 A. R. 288, and my judgment there, 8 O. R. 256, referring to the case of the late Chief Justice Spragge.

*Motion refused.**With costs.*