

HON. MR. JUSTICE KELLY.

MARCH 31st, 1914.

MACDONALD v. BOUGHNER.

6 O. W. N. 172.

Master—Motion to Confirm Report—Reference to Ascertain Next of Kin—Missing Beneficiary—Insufficient Enquiry—Reference Back—Direction as to Advertising.

MIDDLETON, J., on an application to confirm the Report of a Local Master as to the next of kin of an intestate directed that the matter be remitted to the Local Master in order that diligent enquiries be made for a party interested in the estate whose whereabouts had not been known for some years.

Motion by plaintiff for an order confirming the report of the Local Master at Cayuga.

F. Aylesworth, for plaintiff.

J. R. Meredith, for infants.

HON. MR. JUSTICE KELLY:—By an order made in this matter on October 24th, 1913, it was referred to the Local Master at Cayuga to determine and report who are the lawful heirs and heiresses-at-law and next of kin of Fanny Williams, deceased, entitled to share in the distribution of her estate. The Master has found that Gertrude Boughner and John Paul Trotter, Jr., are not lawful heirs-at-law and are not entitled to share in the estate that Charles William Williams, a son of the intestate Fanny Williams, is not now alive; and that deceased's daughters Jane Kirk Macdonald (the plaintiff) and her sister Amelia Kirk Sanders (one of the defendants) are the only heirs-at-law entitled to share in the distribution of the estate.

The finding in favour of these two daughters as being heiresses-at-law of deceased and against Gertrude Boughner and John Paul Trotter, Jr., are supported by the evidence, and to that extent the report should be confirmed.

There is evidence that Charles William Williams has not been heard of for twenty-five years or more and that the last known of him was that he was at or in the locality of Green Bush, Michigan. No attempt has been made to find him by advertising and I think he should not have been declared not to be now alive until that means of ascertaining his