

Chancery.]

NOTES OF CASES.

[Chancery.

to insist upon a sale was forfeited, notwithstanding the lessee's offer to make good the rent and taxes, and pay the amount of purchase money agreed upon.

*Boyd, Q.C., and Stephens*, for plaintiff.

*J. H. Cameron, Q.C., and H. Murray*, for defendants.

NASH V. GLOVER.

PROUDFOOT, V.C.]

*Public Highway—Lengthened possession of original road allowance—Statute of Limitations—Extinction of right.*

The public cannot release their rights; and there is no extinctive presumption or prescription; therefore where an original allowance for road had been taken possession of, and occupied by the plaintiff, and those under whom he claimed, for a period of forty years and upwards:

*Held*, that such lengthened possession afforded no ground for opposing the action of the municipality in resuming possession of the road for the purpose of opening the same.

*R. Martin and Lemon* for plaintiff.

*B. Osler, Q.C.*, for defendant Platt.

*Moss* for defendant Glover.

HELLEM V. SEVERS.

PROUDFOOT, V.C.]

*Will, construction of—Inconsistent words—Executrix beneficially interested—Costs—Inops consilii.*

A testator in a will containing inconsistent provisions, devised certain real estate, after the death of his daughter, to his grandsons, J. & F., "to hold as joint tenants, and not as tenants in common. To have and to hold the same to them during their joint lives; and to the survivor of them; and to their male heirs after their, or either of their decease; and to their heirs and assigns for ever," and in case of the death of F., without leaving lawful issue, then the portion that would have belonged to him if living, the testator gave to another grandson H. for his life, and after his death, to his heirs and assigns forever.

*Held*, that the remainder, after the death of the daughter, went to J. & F. as joint tenants for life, with several inheritances in tail male, and with remainder in fee as to F.'s part to H.

The same will contains the following devise: "My will is that after the decease of my daughter Bridget, and after the decease of all my sons in law, James Esmond, John Emery and John Severs, and not before they are all deceased, then my will is, that the money and mortgages belonging to my estate is to be devised into

equal parts and paid to my grand-children, equally amongst all my grand-children; but in case of the death of any of my grand-children before the death of my daughter Bridget, and before the death of all my sons-in-law, leaving lawful issue, then the share that would have belonged to my grand-child, if living, shall go and belong to the lawful issue of such deceased grand-child."

*Held*, that the estate was not to be divided till 21 years from the death of the testator, and not then unless his daughter and three sons-in-law were dead; and that all the grand-children living at his death took an immediately vested interest, subject to be divested *pro tanto* as the number of grand-children should be increased by future births before the period of distribution.

The testator directed that F. should be sent to college and his expenses paid for out of his estate by his executors. The estate consisted of land only, after taking out a specific bequest of the furniture and the expenses of the funeral; *Held*, that the land was charged with the bequest.

Where a testator provided that the executrix was to have the sole management during her life, and the executors were to manage afterwards; and the latter filed a bill against the executrix without sufficient cause they were not allowed their costs; but the matter having been brought to the notice of the court, a decree for an account was made as respected the executrix.

The person who was to have the sole control and management of the estate being entitled beneficially to the interest on the investments, the court refused to order a transfer in court.

When a will, though prepared by a solicitor, was so inconsistently worded, that but little benefit could be derived from his labours in its construction, the court thought that as liberal an interpretation should be made of the language, in order to ascertain the intentions of the testator, as if he had been in fact *inops consilii*.

*Meek*, for plaintiff.

*Hoskin, Q.C., Delamere and Black*, for the defendant.

LIFE ASSOCIATION OF SCOTLAND V. WALKER.

PROUDFOOT, V.C.]

[Jan. 10.

*Trustees and cestui qui trust—Commission—Practice—Further directions—37 Vict. cap. 1, Ont.)*

The rule of decision in Equity which requires that the expenses incurred by a trustee in the execution of his office shall be satisfied before the *cestui qui trust*, or his assignee can compel