

of the costs to the appellants for two weeks, to enable the respondents to carry in their bill before the taxing-officer, who, under the Ord. lxx., r. 27 (21) (Ont. Rule 1204), had power to make the set-off.

EXECUTOR—PAYMENT TO LEGATEE WITH NOTICE OF LIABILITY—LEGATEE, WHEN LIABLE TO REFUND—MARRIED WOMAN, LIABILITY OF, TO BE SUED—MARRIED WOMAN'S PROPERTY ACT, 1882 (45 & 46 VICT., c. 75), s. 1, s-s. 2—R.S.O., c. 132, s. 3 (2).

*Whittaker v. Kershaw*, 45 Chy.D., 320, deals with two interesting points. First, the liability of a legatee to refund to the personal representative; and second, the liability of a married woman to be sued in respect of claims not strictly arising out of contract. The facts of the case were as follows: The defendant, a married woman, was a residuary legatee. The executors handed over to her, as the residuary estate, the certificates of some shares not fully paid up, and also a sum in cash. No transfer of the shares was made. Subsequently a call was made on the shares, the defendant refused to pay; an action was then brought against the executors in whose name the shares stood, and they were compelled to pay the call, with costs of the action. They then applied to the defendant to recoup them and she refused, and they thereupon applied to the court and obtained an order directing the sale of the shares, which failed to realise sufficient to pay the calls, and left a balance due the executors, to recover which the present action was brought. It was contended by the defendant that she was not liable to refund, because the executors had paid over the residue with notice of the debt; and, also, because the action would lie against a married woman, because it was not founded on any contract made by her. As to the first point, the Court of Appeal (Cotton, Fry, and Bowen, L.JJ.) determined that, though where an executor makes a payment to a legatee with notice of a debt due by his testator he cannot call upon the legatee to refund on being subsequently compelled to pay the debt; the same rule does not apply where the executor has merely notice of a liability; and that notice of a liability for calls is not notice of a debt, because no debt arises in respect of calls until the call has been duly made; and, therefore, in the present case the executors having notice of the liability was no bar to their right to recover. As to the other point, the court determine that the liability of a married woman to be sued is not restricted to cases founded on contract or tort, but that the words "a married woman shall be capable of entering into and rendering herself liable in respect of and to the extent of her separate property on any contract, and of suing and being sued, either in contract or in tort, or otherwise, in all respects as if she were a *feme sole*," 45 & 46 Vict., c. 75, s. 1, s-s. 2 (R.S.O., c. 132, s. 3 (2)), render a married woman liable to be sued for any cause of action for which a man could be sued under similar circumstances; and, furthermore, that her liability to suit is not barred because her separate property is subject to a restraint against anticipation, although that fact may be an obstacle in the way of the plaintiff recovering on a judgment, should he obtain one. The Court of Appeal, though expressing some doubt on the point, held that the right to indemnity extended to the costs of the action against