

Prac.]

NOTES OF CANADIAN CASES.

[Prac.]

Boyd, C.]

[October 22.]

DONALD V. DONALD.

Will—Construction—Maintenance of infants—Reference—Practice.

A testator willed as follows: "I give, devise and bequeath to my executors and executrix" (of whom one was the plaintiff, the testator's widow), "all my real and personal property of every kind whatsoever for the benefit of my children, share and share alike, and to my wife while she continues my widow, and I give to my said executor and executrix power to sell any part or the whole of my real property for the support and maintenance of my children and my wife while she remains my widow."

Held, on action brought by the widow, that under the above will, she and the children took the real and personal property jointly, she during widowhood, and they share and share alike absolutely. She did not take an immediate estate in the whole with reversion to her children, as contended.

Held, also, a reference might be directed, similar to that in *Maberley v. Morton*, 14 Ves. 499 to ascertain whether it would have been reasonable and proper in the trustees to apply any or what part of the land, having regard to the situation and circumstances of the children, to their support and maintenance, and declaring the sum which the Master should find to have been properly expended by the mother in part maintenance to be a charge upon the inheritance of the children respectively in the land.

Walkem, for the plaintiff, Jane Donald.

PRACTICE.

Mr. Hodgins, Q.C.]

[June 7.]

HUGHES V. REES.

Estoppel—Pleading—Jurisdiction of Master—Indemnity to trustee under a void trust deed—Husband and wife—Agency—Maintenance of Children.

Where a party does not plead a prior judgment in bar by way of estoppel before the entry of a judgment directing a reference to the Master-in-Ordinary, he waives it, and

leaves the whole matter at large to be enquired into on the evidence.

The Master has no jurisdiction to make amendments to the pleadings after judgment, nor could he give leave to file a statement in his office raising a defence which ought to appear in the pleadings.

It is incident to the office of a trustee that the trust property shall reimburse him for his expenses in administering the trust, and a clause so indemnifying a trustee is infused into every trust deed; and the statute R. S. O. ch. 107, sec. 3, does little more than what Courts of Equity have been accustomed to do without any statutory direction.

Therefore a trustee, who had been induced by a settlor to accept a trust under an instrument void by the law of the settlor's domicile is entitled to be reimbursed by such settlor for all his expenses incurred in the execution of the trust.

The defendant's wife, who had been supported by the plaintiff with the defendant's consent, returned to her husband's home, but was turned out of the house by him, whereupon the plaintiff again took charge of and supported her.

Held, that the defendant by turning his wife out of his house sent her forth as his delegated agent to pledge his credit for the necessities of life suitable to her position, and that the plaintiff was therefore entitled to assert a claim against the defendant for his expenses in so supporting the defendant's wife; and that such claim could be maintained up to the date of a judgment allowing alimony to the defendant's wife.

Where a father whose children are maintained by another, and who could have obtained possession of their persons by *habeas corpus*, allows them to be so maintained, he is liable for their support and maintenance to the person in whose care such children are.

S. H. Blake, Q.C., and *G. Morphy*, for plaintiff.
MacLennan, Q.C., and *Kingsford*, for defendant.

Mr. Dalton, Q.C.]

[June 20.]

Rose, J.]

[July 2.]

OGDEN V. CRAIG.

Interpleader—Intended seizure.

Upon an interpleader application by the Sheriff of Bruce, it was sworn that the sheriff