

Prac.] NOTES OF CANADIAN CASES—LAW STUDENTS' DEPARTMENT.

Proudfoot, J.]

[October 9.]

MORROW V. JENKINS.

Will—Devise of interest—Right to principal.

The will of a testator contained the following clause: "To my daughters Ellenor and Mary Mariah, I give devise and bequeath the interest of three thousand dollars each per annum to be paid to each of them half-yearly."

Held, that the devisees took an absolute interest in the \$3,000 given to each of them.

Elton v. Sheppard, 1 Bro. C. C. 532 cited, referred to and followed.

Garrow, for the plaintiffs.

Moss, Q.C., for the defendants.

PRACTICE.

Dalton, Q. C.]

[Oct. 2.]

TILSONBURG MANUFACTURING CO. V.
GOODRICH.

Examination of parties.

In an action in the Q. B. Division, the defendant issued an appointment and subpoena for the examination of an officer of the plaintiff's company before issue joined, but after the delivery of the statement of defence no affidavit was filed with the officer who issued the appointment.

Held, that the Chancery practice of examining the parties before issue joined, is now in force in all divisions, but

Held, also that in an action in a Common Law Division, an appointment to examine should not be issued by an officer of the court unless an affidavit is filed with him, as directed by sec. 159 of the C. L. P. Act.

Appointment set aside.

Aylesworth, for the plaintiffs.

Meek, for the defendant.

LAW STUDENTS' DEPARTMENT.

LAW SOCIETY.

EXAMINATION QUESTIONS.

TRINITY TERM:

FIRST INTERMEDIATE.

Equity—Honors.

1. A. by deed purports to convey certain lands to his brother, which lands in fact belong to his son, and he subsequently by will devises certain of his own lands to his said son, who, after A.'s death, claims to hold all the aforesaid lands as his own, while the brother of the testator claims to have acquired an interest therein under the aforesaid instruments. What are the rights of the parties? Give reasons.

2. Give an example illustrating the rule that equity will sometimes relieve one of two persons in respect of an illegal transaction in which both are concerned, upon the ground that they are not *in pari delicto*.

3. State a case in which a tenant is entitled to seek equitable relief by way of interpleader with respect to his rent.

4. Give a general statement of the rules of equity with regard to the right of custody of children, showing (a) the cases in which the parents will be deprived of such custody, (b) the relative rights of father and mother to such custody.

5. A man by his marriage settlement covenants to pay to trustees for his wife \$500 per annum as pin money. During the first two years of their married life she in each year spends and receives from her husband but half of her allowance; the trustees, on the wife's behalf, bring action against the husband to recover the arrears. Can the husband successfully resist their claim or any part thereof? Give reasons.

6. A married man desires his wife to join with him in a conveyance, for the purpose of barring her right to dower which she has in certain of his lands, and in order to induce her to do so he procures his solicitor to exhibit to her a legal text-book, in which it is stated that a wife is not entitled to dower in the lands of her husband. The text-book is in fact one relating to the laws of a foreign country. The wife, relying upon the statement of law contained in the book, joins in the conveyance, and afterwards brings an action to set the same aside. The husband defends the action, relying upon the maxim, *ignorantia legis non excusat*. Discuss the relative rights of the husband and wife upon this state of facts.