

A vesting order was improperly granted, the purchase money not having been paid into Court.

The costs of the litigation have been very great. Apart from the contest as to the alleged misappropriation by two of the trustees of part of the trust fund, which was abandoned at the trial, it is difficult to understand why any suit was necessary, as all that has been obtained might have been gotten by the appointment of a new trustee in the place of the one who had become a lunatic, and a sale by the trustees out of Court.

Order made referring report back to Master for amendment, and application may be renewed in Chambers when the amended report is made. Parties to consider whether unascertained class should not be represented.

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MEREDITH, C. J.

MARCH 2ND, 1903.

WEEKLY COURT.

STEWART v. GUIBORD.

*Equitable Execution—Declaration of Right to Apply Amount Due to Plaintiff by one Defendant upon Judgment against Co-defendant — Appearance—Attornment to Jurisdiction.*

Appeal by defendants from report of local Master at Ottawa.

J. A. Ritchie, Ottawa, for defendants.

Glyn Osler, Ottawa, for plaintiff.

MEREDITH, C. J.—The appeal, so far as it affects defendant Lallemand, fails. Whether or not he was before appearance subject to the jurisdiction of the Court, he has by appearing unconditionally submitted to and cannot now question the jurisdiction.

The appeal of defendant Guibord must be allowed. Plaintiff asks that Guibord may be declared a trustee of a fund for the judgment debtor Lallemand, in order that plaintiff may in some way apply what he owes to Guibord upon the judgment against Lallemand. There is no ground for such an action. Plaintiff must be left, if he can do so, to set off his judgment against Lallemand in any action which Guibord may bring for the recovery of what plaintiff covenanted to pay to him.

Lallemand's appeal dismissed with costs. Guibord's appeal allowed without costs. Is counsel desire that judgment should go upon the Master's report as varied upon the appeal,