

Province of Manitoba.

KING'S BENCH.

Richards, J.] HOUGHTON v. MATHERS. [March 21,
Practice—Motion for judgment on admissions in pleadings—King's Bench
Act, Rule 615—Costs.

Action for specific performance of an alleged contract to sell a certain parcel of land for \$500. The defence to the amended statement of claim denied both the contract originally set up and the allegations introduced by the amendment, but stated that the defendant had always been ready and willing to convey the land on payment of the \$500, and offered to convey as required by the plaintiffs. Defendant then moved that the case be disposed of by the court on the offer to convey contained in his pleading, and relied on Rule 615 of the King's Bench Act, R.S.M. 1902, c. 40, which provides that: "Any party to an action may at any stage thereof apply to the court or a judge thereof for such an order as he may, upon any admissions of fact in the pleadings, or in the examinations of the other party, be entitled to; and it shall not be necessary to wait for the determination of any other questions between the parties." "(b). The court or a judge may, on such application, give such relief, subject to such terms, if any, as such court or judge may think fit."

Held, that the words "admissions of fact in the pleadings" in that Rule are not confined to such admissions made by an opposite party, but that the Rule may be availed of by the party making the admissions, and an order made accordingly, and the consent and offer made by defendant, although strictly speaking not an admission of fact, should be treated as one for the purposes of the Rule, as its object is to save further proceedings and further costs when the need of trying issues is removed by admissions.

Held, also, that, as defendant by applying in that manner, put it out of the power of the plaintiffs, to prove their allegations and out of the power of the court to decide, on the merits, who should pay the costs of the action, the case should be treated, for the purpose of awarding costs, as if the defendant had admitted the truth of the plaintiffs' pleadings, as well as submitted to the relief asked for, and that the defendant should pay the main costs of the actions including the costs of the motion.

Elliott, for plaintiffs. *Mathers*, for defendant.

Dubuc, C.J.] KINSEY v. NATIONAL TRUST CO. [March 28.
Contract—Representation influencing conduct—Promise to devise interest in
land—Part performance—Statute of Frauds, s. 4—Will—Lapse of
devise to party who predeceased testator—Acceptance of offer by conduct.
The plaintiff was an illegitimate daughter of D. C. Kinsey, who lived
in Winnipeg with her mother until the plaintiff was about six years old,
when they separated, the plaintiff going abroad with her mother who