THE

ONTARIO WEEKLY REPORTER

VOL. X. TORONTO, AUGUST 1, 1907. NO. 10

BOYD, C. MAY 7TH, 1907.

TRIAL.

LYNN v. CITY OF HAMILTON.

Highway—Non-repair—Injury to Pedestrian by Fall on Sidewalk—Dangerous Condition by Reason of Snow and Ice—Evidence as to Period of Condition—Rapid Climatic Changes—Liability of Municipal Corporations—Gross Negligence.

Action by Eleanor Lynn to recover $1,000 damages for personal injuries sustained by her on 24th December, 1906, by a fall upon a sidewalk on a street in the city of Hamilton, which, she alleged, was out of repair and unsafe, owing to the negligence of defendants in not removing or causing to be removed therefrom large quantities of ice which had accumulated thereon.

The defendants denied negligence and set up that notice in writing of the alleged accident and the cause thereof was not served upon them within 7 days after the accident, and relied upon the Municipal Act, 1903, sec. 606, sub-sec. 3.

M. J. O'Reilly, Hamilton, for plaintiff.

F. R. Waddell, Hamilton, for defendants.

BOYD, C:—I do not think there can be a recovery in this case, even apart from the question of notice. I think it would be very unsafe, having regard to the terms of the statute—"gross negligence"—to hold the city corporation liable in a case of this sort, where the evidence is of so conflicting a character. I think plaintiff's witnesses have exaggerated the depth of the snow, and some of the others

have exaggerated the condition of affairs, and the defence must be looked at in this case. The city corporation have charge of a large area of streets, and it is an impossibility, under the climatic conditions which obtain in our winters here, to keep all places perfectly safe. Accidents are continuallly occurring; persons slip, getting legs broken and arms broken. Perhaps I do not speak from judicial experience, but it is common knowledge, it almost may be said, that these cement pavements are the most dangerous things possible in particular kinds of weather. It is one of the penalties we have to pay for our modern civilization. It is practically impossible to get wood. I suppose we have to adopt them; wood is too expensive; some substitute must be obtained, and this appears to be the most available and permanent, but it has its drawbacks in certain kinds of weather; with a little water or a little ice on, it is a most troublesome matter. And, although there may have been some small lumps on this sidewalk, yet I cannot, upon this evidence, say they were of such a nature or of such appearance as to fix the city with liability for gross negligence. That is what we have to get at.

Now, according to the evidence, the fall of snow which probably made this condition, was on the Thursday. The witnesses do not put the snow back more than 2 or 3 days. Well, I suppose you may take that as 2 days. Even if you take it as 3, it would bring the lumpy condition—slight lumps—to Saturday. Then there was Sunday intervening, and this accident took place on Monday. Now, it is a serious proposition of law to say that this was a state of facts on which the city corporation were guilty of gross negligence. The sidewalk appears to have been cleared on each side more than at this particular place, but, according to the evidence of two of the witnesses, their attention was not called to this; it was not observed by the authorities; although other witnesses passing by observed the same thing, they did not notice anything out of the ordinary; and it is just one of those cases where, on inspection by a person interested or hurt, the place may appear to be dangerous, and its appearance may be taken as some evidence of carelessness; and yet I cannot say that it is of such gross character that defendants should be penalized.

I do not deal with the question of notice; the notice may have been in time; but on the facts I think the action ought to be dismissed. No costs.

BRITTON, J. JULY 2ND, 1907.

TRIAL.

CUMMINGS v. DOEL.

Vendor and Purchaser—Contract for Sale of Land—Completion of Houses by Vendor—Purchaser to have Right on Default of Vendor to Complete and Deduct Price from Balance of Purchase Money—Payment of Balance of Cash—Refusal of Purchaser to Deliver Mortgage for Part of Price, Houses being Incomplete—Action for Declaration of Rights—Mandatory Order for Delivery of Mortgage—Costs.

Action to compel defendant to deliver to plaintiff a charge or mortgage for $1,400 upon property purchased by defendant from plaintiff. The instrument had been executed by defendant, but not delivered.

A. B. Armstrong, for plaintiff.

T. D. Delamere, K. C., for defendant.

BRITTON, J:—Plaintiff sold to defendant parts of lots 211 and 212 on the west side of Indian road, in Toronto Junction, upon which land there were 2 houses erected by plaintiff. The bargain originally was a verbal one. The price, terms of payment, and all had been satisfactorily agreed upon between the parties prior to 30th October, 1906, and part of the purchase money had been paid over. On that day an agreement in writing was made. . . . By this agreement plaintiff was "to complete the erection of the houses . . . in a good, efficient, and workmanlike manner," and was to do certain specific things, including the putting in "a complete hot water heating system in each of the said houses, sufficient for the purpose of heating said houses, not less than 10 radiators in each house." All was to be completed on or before 15th November, 1906, and in default, defendant was to have the right to do the work and deduct the cost from the balance of purchase money due plaintiff. When this agreement was made there was a balance of purchase money not paid over to plaintiff, $4,900, of which $1,400 was to be secured by mortgage, and $1,500, subject to being reduced by the adjustment of taxes and insurance, to be paid in cash.

The conveyance was executed, so was the mortgage, the latter bearing date 1st November, 1906. Plaintiff completed, as she says, what she was to do under the agreement. Defendant contends otherwise. Plaintiff required money to pay off liens, and defendant, on an adjustment of taxes and insurance, paid to his solicitor . . . $1,472.47 in full of the $1,500 mentioned.

It was, in my opinion, in the contemplation of the parties that in case defendant did any of the work mentioned in the agreement, it was to be done immediately after default by plaintiff, and the cost of such work was to be deducted from the . . . $1,500; but that sum, as I have said, was paid over, and the transaction was treated as closed, subject only to the mortgage liability on the part of defendant and the liability of plaintiff under the agreement of 30th October. Defendant obtained her conveyance and had it duly registered, but refused to allow the mortgage to be handed over. Neither party asked me upon the trial to determine any question as to the completion of the houses according to the agreement, except so far as it was deemed necessary for the purpose of determining the question of plaintiff's right to get the mortgage.

It is in the interest of the parties and of justice that all matters between them in regard to the houses in question shall, as far as possible, be determined in this action.

I find that the delivery of the conveyance to defendant was not authorized except upon the cotemporaneous delivery of the mortgage to plaintiff. It was one transaction, and if to be completed as to title and conveyance before the performance by plaintiff of the agreement of 30th October, it was to be completed by giving neither party any advantage over the other—and defendant now has, as against plaintiff, a registered conveyance, while defendant withholds what plaintiff is entitled to have as a security to her for the balance of $1,400. The mortgage has been executed, and defendant apparently made the necessary declaration of age, but the commissioner omitted to sign that declaration, and the solicitor, who is a subscribing witness to the execution of the mortgage, has not made the usual affidavit for the purpose of having the mortgage registered. Plaintiff is entitled to have this mortgage, in a condition complete and ready for registration, duly delivered by defendant to her.

I find that there is no liability on the part of plaintiff to defendant in respect of the completion of said houses or

as to fences, sidewalks, connecting pipes with sewers, or gables, or any other liability except as to the sufficiency of a complete hot water heating system, and as to that I do not determine either way. Plaintiff contended that the hot water heating system was sufficient to satisfy said agreement—defendant contended that it was not. Under the agreement the number of radiators is to be not less than 10. The location of these is for plaintiff, except so far as a particular location may be necessary for sufficient heating. This question of the sufficiency of a complete hot water heating system, in my opinion, could well be dealt with by scientific or local investigation, so I was disposed to refer this matter to a special referee, under sec. 29 of the Arbitration Act, and, with that in view, the counsel in this case, at my request, came before me, but they did not agree upon a special referee, and were not prepared to make any suggestion as to an expert whom I could call to assist me. The parties stood upon their strict legal rights. Defendant contends that under the agreement her remedy is, in the event of the insufficiency of the heating, to do the work and deduct the cost from the balance of the purchase money, and that she ought not to be left to recover what an expert or referee may say, especially as the work as necessary and as contended for by defendant has already been done by her in one of the houses, and is to be done in the other. Under the circumstances, I will not, against the will of the parties, force an expert upon them, much as I think this would be in the interest of both with a view to saving further litigation.

Judgment will be for a declaration: (1) that plaintiff is entitled to the mortgage as asked, completed and ready for registration; (2) that as to matters in agreement . . . defendant has no claim against plaintiff in respect of fences, sidewalks, connecting down pipes with sewers, or the gables; (3) that this judgment is to be without prejudice to any claim defendant may make against plaintiff for breach of her agreement as to putting in a complete hot water heating system in each of said houses, sufficient for the purpose of heating said houses, not less than 10 radiators in each house; (4) that in the event of the liability under said agreement being established, and the amount ascertained, defendant is entitled to deduct the amount so found against plaintiff, when found, from the amount of said mortgage.

Plaintiff is entitled to a mandatory order for the delivery by defendant of the mortgage in question.

Defendant must pay costs, but, as I think some of the difficulty between the parties has arisen by reason of one solicitor acting to some extent for both parties, and upon all the circumstances, . . . I fix the costs down to date at . . . $100. The subsequent costs of entering judgment, etc., if that be necessary, will be paid by defendant to plaintiff.

BRITTON, J. JULY 2ND, 1907.

TRIAL.

LOGAN v. DREW.

Trusts and Trustees—Assignment of Mortgages by Father to Daughters—Alleged Trust in Favour of Assignor or all His Children—Action by Assignee of Father for Declaration of Trust—Parties—Addition of Assignor—Failure of Evidence to Establish Trust—Absence of Fraud—Champerty.

Action by William J. Logan, as assignee of the claim of his father, John Logan, for a declaration that certain assignments of mortgages made by John Logan to two of his daughters, the defendants, were made to them as trustees for him (John Logan) or for the plaintiff and the other children of John Logan.

T. G. Meredith, K. C., for plaintiff.

A. Weir, Sarnia, for defendants.

BRITTON, J.:—John Logan, a man of about 75 years of age, with his faculties about him, is the father of the plaintiff and one other son, and of the defendants and 4 other daughters. He was the owner of the mortgages set out in the statement of claim and of a house and lot in the township of Sarnia. He was twice married. His first wife died in June, 1900, or 1901, and he married his second wife in June, 1905, and there promptly followed separation, and her alimony action was begun on 12th September, 1905. It is in evidence, in a general way, that there were unhappy dif-

ferences between them, and that her alimony action was in prospect on 13th July, 1905. On that day John Logan came to the office of his own solicitor, Mr. John R. Logan, a gentleman not related to the parties, and made an assignment to defendants of each of the three mortgages mentioned. These mortgages were made by James Logan, Spetz, and Drew, amounting in all to about $5,400.

It is contended by plaintiff . . . that these assignments, though absolute in form, were in fact made to defendants as trustees.

Plaintiff claims by assignment dated 27th August, 1906.

It seems quite clear that the father, John Logan, was not willing to go to law with his daughters. It is not too strong to say that the litigation, whether for weal or woe, is that of plaintiff. He had obtained the house and lot in Sarnia; he says he bought it, and probably he did, for he says that out of the proceeds he settled the alimony action against his father, and the father got some money from the sale of this property. On 8th June, 1906, before settlement of alimony action and before the assignment from his father, plaintiff wrote to his sister, Mrs. Drew, a threatening letter demanding a settlement of his share of the mortgages, before the 15th of that month. The threat was of a criminal prosecution for something which plaintiff says defendant knew about.

The writ of summons was issued in this case on 31st August. On the next day plaintiff wrote again to his sister threatening the criminal prosecution, stating that everything was ready, and, unless settled, prosecution would go on. He said: "I am not at all anxious for disturbance, and a nice quiet settlement would suit me better, and if this is not done by one week from to-day, I will start at the foot of the ladder and expose and prosecute all that is in my power, and, as you know, and some of the rest of the family know, that is a good deal."

These letters shew that plaintiff is not the person on whose behalf the Court needs to be astute to find improper motives or fraudulent intent on the part of those whom plaintiff is prosecuting in this action. If plaintiff, by writing and sending these letters to his sister, one of the defendants, with the object of obtaining a settlement by means of threats of criminal prosecution, has not brought himself within the Criminal Code, he has come very close to it.

The statement of claim alleges that the mortgages mentioned were transferred to defendants as trustees for John Logan, and that they should be re-assigned to him whenever he required that to be done, or, in the alternative, that the mortgages were assigned in trust to divide the money, when realized, among the lawful children of John Logan as he might direct.

There is no question in this case of fraud or undue influence or want of capacity on the part of John Logan, or want of legal advice. John Logan is exceptionally clear and bright and active for a man of his years. He went to his own solicitor, of his own mere motion, and gave instructions for the transfers as they were afterwards drawn up and executed.

The evidence put forward as evidencing a trust is that of the solicitor John R. Logan. He said that when the assignments were drawn both mortgages and assignments were to be left in his possession, and that John Logan said (he would not say that Mrs. Drew so said), "make it clear that both are to be present when mortgages taken away." The solicitor says Mrs. Drew said, "You know, father, I am not asking for this for myself—it is in the interest of the family." The solicitor thinks Mrs. Drew said she would divide the proceeds as her father might direct. The solicitor advised some writing, but the parties did not assent to that, and it does not in any way appear that if John Logan wanted any writing, or any understanding in regard to these mortgages, there was anything to prevent his getting it.

The evidence of John Logan was that he should get the mortgages back when he wanted them. No question about division, but he says, "They did say they would divide the money in case of my death." He also stated that if his son had not brought suit, he would have let matters stand as they were.

In the absence of fraud or undue influence or weakness of mind or want of professional advice, it is an unheard of condition to set aside a transfer of property at the instance of a mere assignee for the purpose of litigation, when his assignor would have allowed the matter to rest. That being the case down to the trial, it does not add to the strength of plaintiff's case merely to add John Logan as a party plaintiff.

As against plaintiff's case is the evidence of the defendants. Then the affidavit of John Logan, made in the ali-

mony action on 22nd January, 1906, in which he states that he is dependent upon his sons and daughters for support, and that, apart from the 2 1-2 acres in the township of Sarnia, he has no other property of any nature or description.

John Logan, some time after the assignment to defendants, gave a written order to Mrs. Drew to get these mortgages from the solicitor. Such an order was not produced at the trial, but the solicitor remembers it, and refused to honour it.

Mary Logan, a sister, speaks of an occasion before the assignment to plaintiff when plaintiff asked their father to go in and help beat the girls out of the money or mortgages. The father replied, "No, it is the girls', and I will not do anything." On cross-examination she said her father's exact words were: "No, I gave them to the girls, and I have nothing more to do with them."

Alice Logan gives practically the same evidence. Neither the father nor the plaintiff contradicted this evidence, and I regard it as most important as against the trusts alleged.

The explanation of this transaction seems to be the confidence the father had in his daughters—not that they would act as trustees to administer any trust declared or undeclared—but that they would support him, if necessary, and deal fairly and liberally with the rest of the family, and they certainly have been most liberal to every member of the family called. Plaintiff is the only one who, so far as appears, is at all hostile. Even if for the family, the members of the family, other than the plaintiff, are satisfied.

I think plaintiff fails.

If not already added, John Logan may be added as a party plaintiff, upon filing the usual consent, and the action fails whether John Logan is added . . . or not.

As to the alleged settlement, I think none was actually arrived at. There were negotiations certainly, and apparently a verbal understanding was arrived at as to an amount to be paid, but not a complete understanding as to how that amount was to be applied. When reduced to writing, and even signed, plaintiff refused to allow it to be delivered or to carry it out. He had the right to do this, so no settlement was actually made. This, in the view I take of the case, is to be regretted.

Although the explanation given by both defendants as to their expenditure of money was most inexact and in

some respects unsatisfactory, their evidence was entitled to credence. There was an absence of anything to indicate fraud on their part.

The assignment to plaintiff was not champertous. If, as alleged, the mortgages were impressed in defendants' hands with a trust in favour of the children of John Logan, then plaintiff would be entitled, and an assignment to enable him to sue for what he was interested in would be perfectly legal.

Action dismissed with costs.

RIDDELL, J. JULY 3RD, 1907.

CHAMBERS.

REX v. ROBINSON.

Criminal Law — Habeas Corpus — Issue of Second Writ — Change of Circumstances — Right of Appeal — Term of Imprisonment — Commencement from Day of Sentence — Magistrate Allowing Prisoner to go Free—Escape—Expiry of Term of Imprisonment — Discharge of Prisoner—Costs against Magistrate.

Motion by William Robinson, the defendant, upon the return to a writ of habeas corpus, for an order for his discharge from custody.

J. B. Mackenzie, for defendant.

J. R. Cartwright, K.C., for the Attorney-General.

RIDDELL, J.:—On 17th January, 1907, the applicant was convicted by and before Peter Ellis, police magistrate, for a second offence against the Liquor License Act, and sentenced to be imprisoned for the space of 4 months. Instead of at once having him conveyed to the common gaol, the magistrate allowed him to go free, taking his recognizance to appear when called upon. Some time in March,

without further notice to him, a warrant was issued by the police magistrate for his arrest, and he was arrested and incarcerated in the common gaol at Toronto. A writ of habeas corpus having been granted, a motion was made before me for his discharge on 26th April, 1907. The papers being on their face regular, I refused his discharge, reserving leave to move for a new writ upon the expiry of the 4 months from the day of sentence. Upon application made, I granted a writ on 25th June, and upon the return a motion was made for the discharge of the prisoner on 27th June.

It was objected that the second writ was irregular and should not have been granted, and Taylor v. Scott, 30 O. R. 475, was cited in support of that proposition. I do not agree. The ratio decidendi of Taylor v. Scott is that by R. S. O. 1897 ch. 83, sec. 6, an appeal lies to the Court of Appeal from the decision of a Judge before whom a person deprived of his liberty has been brought by habeas corpus remanding him (see p. 478), and therefore, in case such person does not appeal, the matter is res adjudicata. Whether the case of Taylor v. Scott was well decided, under the facts and circumstances of the case, is not for me to inquire—of course I should follow it were it in point. And whether R. S. O. 1897 ch. 83, sec. 6, prevails over sec. 121 of R. S. O. 1897 ch. 245, so that the imprisoned or the applicant here would have the absolute right to appeal to the Court of Appeal, or whether, if not, the fact that an appeal is given only if "the Attorney-General for Ontario certifies that he is of opinion that the point is of sufficient importance to justify the case being appealed," takes the case out of the rule in Taylor v. Scott, I do not stop to consider. That case dealt with a finding by a Judge that could be appealed; and it was held that the proper course for one to pursue, if dissatisfied with a decision adverse to him, is to appeal to the Court of Appeal, and not apply to another Judge, according to the practice of the common law, and that if he fails to take the appeal given him by the statute of 29 & 30 Vict. ch. 45, he must be bound by the judgment res adjudicata. Here, however, the former writ was granted before the expiration of the 4 months of imprisonment inflicted—the present writ after. There has been a change of circumstances, the former proceeding was premature, and there is no adjudication upon the matter now before the Court. The case is nearly like

the civil action of Barber v. McCuaig (No. 2), 31 O. R. 593. In that case an action had been brought which failed in the Supreme Court, 29 S. C. R. 126, because the plaintiff had not exhausted her remedies against the mortgaged lands and certain persons named. Afterwards, having exhausted her remedies as aforesaid, she brought a new action, alleging the same facts as in the former action, and that she had exhausted the said remedies. Upon defence of res judicata being set up, Meredith, C.J., in a carefully considered judgment, held that there could be no such plea successfully pleaded, where the former action failed by reason of the fact that it was prematurely brought. I think the same rule applies here, and that I had the right to grant the new writ upon the alteration of circumstances—but I think that such a writ should not be granted upon any ground which might have been taken upon the former application.

I consider, therefore, the one objection only, namely, that the term of imprisonment has expired.

The term of imprisonment begins on and from the day of passing sentence (see R. S. C. 1906 ch. 148, sec. 3), and consequently the full term here has long since expired. But it is contended that the facts of this case constitute an escape, and, therefore, the applicant here must serve the term equivalent to the whole amount of the imprisonment imposed. See R. S. C. 1906 ch. 146, sec. 196.

An escape is defined by R. S. C. ch. 146, sec. 185, thus: "Every one is guilty of an indictable offence and liable to two years' imprisonment, who, having been sentenced to imprisonment, is afterwards, and before the expiration of the term for which he was sentenced, at large within Canada, without some lawful cause, the proof whereof shall be upon him." Here the applicant was at large before the expiration of the sentence, and the whole question is whether he has shewn "lawful cause" for being so at large. The taking of bail was admittedly beyond the powers of the magistrate, and perhaps the magistrate would be liable for a voluntary escape or a negligent escape at common law—and it may be that the provisions of the Criminal Code, ch. 146, are wide enough to cover his case. And if the present applicant had, by force or artifice, by craft or guile, brought about his release, he would undoubtedly have been guilty of an escape both at the common

law and under the Code, sec. 185. Much learning upon this subject may be read in Russell on Crimes, vol. I., bk. II., ch. xxx., sec. 1, pp. 567 et seq. of the 5th ed., and in Archbold's Criminal Pleading and Evidence, 22nd ed., pp. 978 et seq., and in similar books. If, indeed, the applicant had taken any part, however small, e.g., by requesting or urging it, in procuring his release, he might well be considered guilty, but the facts here shew quite a different state of things. After sentence, he was allowed to go away, and shortly thereafter he was brought back by a peace officer to the magistrate, there told that he must enter into a recognizance, and upon doing so he was sent away. Giving all effect to the maxim that every man must be held to know the law, I decline to hold that Robinson, doing as he was told by the magistrate, could be said to be "at large . . . without some lawful cause;" that is, a cause lawful quoad him—however unlawful it may have been in the abstract or quoad the magistrate. (This latter is for the Attorney-General to consider.) All the cases of escape reported are cases in which the prisoner knew, or ought to have known from the circumstances, that he had no right to his liberty—there was a mens rea—here the prisoner had no reason to think everything was not being done regularly, and no mens rea can be seen.

Any doubt should be resolved in favorem libertatis, and I have the less hesitation in so doing since the Attorney-General may appeal, if he thinks the point of sufficient importance.

The applicant should be released, and he should have his costs from the magistrate. The magistrate not being a party before me, I cannot order him to pay these costs. But upon ordering, as I do, that no action is to be brought against any person for the imprisonment, I order that this protection shall extend to the magistrate only upon his paying, within 30 days, the costs of these proceedings, which I fix at $40.

RIDDELL, J. JULY 3RD, 1907.

CHAMBERS.

RE COULTER, COULTER v. COULTER.

Improvements—Mistake in Title — Administration Proceeding —Life Tenant—Belief in Ownership in Fee Simple—Report—Reference Back—Inquiry as to Improvements—Evidence—Costs.

Motion by William John Coulter for payment out of Court to him of $1,598, in the circumstances mentioned in the judgment.

John King, K.C., for the applicant.

F. W. Harcourt, for the infants .

RIDDELL, J.:—The late John Coulter by his last will and testament devised lot 14 in concession A. of the township of Etobicoke to his son William John Coulter, using words which have been interpreted to mean that the son took for life. An order was made by Falconbridge, C.J., for the administration of the estate of John Coulter on 12th March, 1907, and in the course of the administration the land in question was sold—why it does not appear. It is alleged that William John Coulter was advised that he was under the will the owner in fee, at least after he had received from his brothers and sisters a deed which is produced; and that under such mistake he "expended the sum of $1,598 for permanent improvements" upon the said land. The Master reports thus: "15. It has been made to appear before me that the said William John Coulter has expended the sum of $1,598 for permanent improvements which he claims to have made in mistake of title upon the said real estate . . ." and I report this specially to the Court at the request of all parties.

A motion was made before me, upon consent of all adults interested, that the sum aforesaid be paid out to William John Coulter. Were all parties sui juris, I should have upon consent made the order. But infants are interested, and it is, therefore, necessary to examine into the legal position.

If the applicant bases his claim upon R. S. O. 1897 ch. 119, sec. 30, it is apparent that he is met with a two-fold difficulty: (1) the Master has not found as a fact that the expenditure was made under the belief that the land was his own; and (2) if such a finding had been made, it is not the amount of the expenditure to which he is entitled, but "the amount by which the value of the land is enhanced by such improvements."

Were this a partition action, perhaps the first difficulty could be got over—it is fairly clear that in partition it is proper to consider the amount by which the property has increased in value by the improvements and repairs made by one person interested: Leigh v. Dickson, 15 Q. B. D. 61, 67; Teasdale v. Sanderson, 33 Beav. 534; In re Jones, [1893] 2 Ch. 461. But whether, outside of the statute, improvements are to be allowed for in an action like the present, I shall not decide without argument, if it be necessary to decide the question at all.

In any case, even in a partition, the amount allowed is not the amount of the expenditure, but the amount by which the value of the property is increased—"the increase in value," as Lord Justice Cotton puts it in Leigh v. Dickson—the extent to which "the present value of the property has been increased by the expenditure," as North, J., has it in the last case cited, but in no case exceeding the amount of expenditure: see In re Jones, [1893] 2 Ch. at p. 479.

The motion will be refused, with costs payable to the official guardian, and the matter referred back to the Master to report specially: (1) whether the applicant . . . made lasting improvements on the land in question under the belief that the said land was his own; (2) if so, the amount and date of the expenditure in such lasting improvements; (3) the amount by which the value of the land was enhanced by such improvements.

Since the land has been sold, the last-named amount will be the increased value at the sale, and for the purpose of the sale. As William John Coulter is said to have bought the land, the evidence as to increased value will be scrutinized closely, more particularly as, though, no doubt, he obtained certain advantages from the improvements, he

can, being himself the life tenant, be charged an occupation rent. Costs of proceedings in the reference back will be reserved.

I cannot help suggesting that officers of the Court should endeavour to use the language of the statute, and not employ terminology which may seem to them to be equivalent.