with a reference to the Master. The Master made A. S. a party to the suit in his office, and A. S. petitioned to have the Master's order set aside.

Held, following *McVean* v. *Tiffin*, 13 A. R., that the mortgage was not a subsequent, but a prior mortgage as regarded the plaintiff's lien, and that the Master should not have added A. S. the mortgagee, as a party.

Field, and *W. M. Douglas*, for the petitioner.

Shepley and *E. O'Connor*, for the plaintiff.

Boyd, C.] [Feb. 14.

WEST *et al. v.* PARKDALE *et al.*

Damages, Measure of—Evidence—Injury to land—Injury to business—Prospective value of land.

The defendants having built a subway in front of the plaintiff's property, and in so doing lowered the highway so as to cut off the access thereto, which was previously enjoyed, and seriously injure the same, under the circumstances set out in 7 O. R. 270, 8 O. R. 59, 12 O. R. 393, 12 S. C. R. 250, and 12 App. Cas. 602, it was referred to an official referee to take an account of the damage, if any, sustained by the plaintiffs by reason of the wrongful acts of the defendants, and to fix the compensation proper to be paid in respect thereof. On such reference the referee ruled (1) that the measure of damages was the difference in value of the property before and after the construction, with interest added; (2) that the prospective capabilities, or value of the land, could not be taken into account, except so far as such elements enter into the computation of the then market value, or have regard to what would have been the present value of the property had the subway not been constructed; and (3) that the plaintiffs were not entitled to special damages for injury to their business. On an appeal from this ruling, it was

Held, that the corporation were liable as wrong-doers, who were not protected from the consequences of their tort by any statutory provision, and they should make good all damages sustained for which an action would lie for their unauthorized act, such damages being of a two-fold character, involving injury to the plaintiff's land and to his business. If, in the evidence, one injury could be discriminated from the other, it was competent to recover under both heads.

Held, also, that evidence might be received of the present value of the property, with a view to throw light on the prospective capabilities of the land at the date of the trespass, but not to form a basis for compensation on its present value. The evidence must be used to aid in fixing compensation for the detriment sustained at the date of the perpetration of the wrong, having regard to the then present and the potential value of the property.

Cassels, Q.C., and *H. Cassels*, for the plaintiffs.

Osler, Q.C., and *J. H. Macdonald*, Q.C., for the defendants.

Robertson, J.] [Feb. 24.

Re FRAGNOR AND KEITH.

Vendor and Purchaser Act—R. S. O. c. 109 (1887)—*Will—Devise—Estate limited "to heirs but not to assigns"—Fee simple.*

A devise in a will worded as follows, "I also will and bequeath to my daughter, L. A., the land and premises on which she now lives, and being all the land in said locality now owned by me, to her and her heirs, but not to their assigns." L. A. married, and had issue. In an application under the Vendor and Purchaser Act,

Held, that she took an estate in fee simple.

D. A. Givens, for vendor.

E. H. Britton, for purchaser.

Robertson, J.] [Feb. 24.

Re COLLITON *v.* LANDERGAN.

Will—Devise—Restraint on alienation—Estate tail.

A testator by his will provides as follows: "I leave and bequeath to my lawful wedded wife, M. E., all my personal property, as also the sole control and management of my real estate . . . Said estate being composed . . . I leave and bequeath the aforesaid estate to my son, J. C., after my wife's death . . . and the said estate is not to be sold or mortgaged by my son, J. C., but is to belong