

Court should not allow its hands to be tied by the covenant not to sue in a case, such as the present, where the obligation to pay has been repudiated."

PROBATE—SEVERAL TESTAMENTARY DOCUMENTS—"LAST AND ONLY WILL"—INTENTION.

*Simpson v. Foxon* (1907) P. 54 was a probate suit in which the testator had left several testamentary papers and the question was whether all of these should be admitted to probate. The first was made in 1898 disposing of all his property and appointing his daughter executrix. The second was made in 1903, and was on a printed form commencing, "This is the last and only will of me," whereby he bequeathed the proceeds of an insurance policy and appointed an executor. The third was made in 1905 and described as "a codicil to the last will," whereby he made certain bequests and appointed other executors. The executors named in the last document applied for probate and it was held by Barnes, P.P.D., who tried the case, that all three documents must be admitted to probate and that the words "last and only" in the second did not have the effect of revoking the former will except so far as it was inconsistent with the second one.

RAILWAY COMPANY—OMNIBUS BUSINESS—INCIDENTAL POWERS—ULTRA VIRES.

*Attorney-General v. Mersey Ry. Co.* (1907) 1 Ch. 81 was an action to restrain a railway company from carrying on an omnibus service, as being ultra vires. The railway ran from Liverpool to Birkenhead, and, for the convenience of passengers, the company provided a service of motor omnibuses between their central station at Birkenhead and the residential part of the town. These omnibuses were run to and from their station in connection with their train service, but they picked up passengers and carried them for any distance they pleased on the route, for which fares were charged. Warrington, J., held that as the defendants had no power by their special Acts to run omnibuses their doing so was ultra vires and he granted an injunction (1906) 1 Ch. 811 (noted, ante, vol. 42, p. 561), and the Court of Appeal (Williams, Moulton and Buckley, L.JJ.), held that he was right, but on the defendants undertaking to run the omnibuses to or from the station on their line and in connection