

may be apportioned. This has been done in the United States: *Butler v. Rivers*, 4 R. I. 38; *Ballou v. Black*, 17 Neb. 389. The Master found that the lien was registered and the action brought within the time limited by secs. 22 and 23, and as there is evidence to support his conclusion, it should not be disturbed. There was also evidence to establish the work done, and the materials furnished for the part of the building which belonged to the wife. The Master's finding should not be disturbed even though he had found the other way on the evidence. It cannot be said he was wrong, and unless it can, his findings should not be set aside.

BRITTON, J., I concur.

Appeal dismissed with costs.

A. Abbott, Trenton, solicitor for plaintiff.

T. A. O'Rourke, Trenton, solicitor for Mary E. Hess *et al.*

BRITTON, J.

JANUARY 18TH, 1902.

CHAMBERS.

RE MOORE.

Will—Conversion—Residuary Legatee.

Application by an executor for advice of the Court, under R. S. O. ch. 129, sec. 39. The testatrix, Abigail Moore, by the first clause of her will, devised her homestead to Mrs. Robert Moore, her son's wife. Subsequent to the execution of the will, the executrix sold the house, receiving some cash, and a mortgage for the balance of the purchase money. By the seventh clause of the will it is provided that, "any money there may be over and above what I have herein mentioned, I give to my nephew, Joseph Mills of Ireland, County of Monaghan."

George Edmison, Peterborough, for executrix.

M. Dennistoun, Peterborough, for Joseph Mills.

BRITTON, J.—Held, that Mrs. R. Moore is not entitled to the mortgage or the money thereby secured upon the house. Held, also, that this mortgage is to go to Joseph Mills under the 7th clause in the will. Held, further, that there is no intestacy as to any part of the estate. Joseph Mills consenting in Court to the erection by executor of a suitable tombstone to the memory of Abigail Moore, order made for erection of same, at a cost not to exceed \$50, and that the cost thereof be allowed to the executor in passing his accounts. Costs of all parties to this application to be paid out of the estate.

Edmison & Dixon, Peterborough, solicitors for executor.

Dennistoun, Peck, & Stevenson, Peterborough, solicitors for Joseph Mills.