

A. P. in 1873, assumed to mortgage the lands in fee, and died in 1887.

*Held*, that the mortgage only bound his life estate, and that the vendors were not bound to procure a discharge thereof. *Re Ponton et al. and Swanston*, 669.

*Mortgage—Power of sale—Vexatious user.*]—See MORTGAGE, 2.

*Mortgage—Power of sale.*]—See MORTGAGE, 1.

*Church property—Sale—Notice.*]—See CHURCH, 1.

### VERDICT.

1. *Malicious prosecution—Questions to jury without objection—Answering questions and giving general verdict.—Right to.*]—By secs. 263—4 of the C. L. P. Act, R. S. O., (1877), ch. 50, except in certain actions including malicious prosecution, the Judge may require the jury to answer questions; and "in such case the jury shall answer such questions, and shall not give any verdict;" and by sec. 252, the parties in person, or by their attorney or counsel may waive trial by jury.

In an action for malicious prosecution, the trial judge, without objection, left certain questions to the jury which they answered, but added that their verdict was for the plaintiff. The Judge disregarded the general verdict, and entered judgment on the answers to the questions, for the defendant.

*Held*, that the parties must be assumed to have waived their right to a general verdict, and assented to judgment on the specific findings of fact; for if they could waive trial by

jury altogether, there was no reason why they could not agree to the course adopted in this case. The jury therefore in finding a general verdict were doing what it was agreed they should not do, and what the parties and the Court dispensed with their doing. *Gower v. Lusse*, 88.

### WAY.

1. *Way—Easement—Appurtenant to particular property—Restriction of user—Adjoining land.*]—Where a right of way is granted as appurtenant to certain lands, there is a right of unrestricted user of the way in connection with the beneficial enjoyment of the premises to which it is appurtenant by every part-owner of the property, but such part-ownership confers no right to further burden the land over which the way exists by using it in connection with other adjoining property to which the privilege is not annexed. *Telfer v. Jacobs*, 35.

### WINDING-UP ACT.

*Banks and banking—Shareholders within month of suspension.*]—See BANKS AND BANKING, 2—COMPANY, 3.

### WILL.

1. *Devise—"Properties"—Real estate covered—Occupation of tenant—Possession of testator.*]—A testator by his will provided as follows: "I will and bequeath to \* \* \* O. H., all properties, monies, and personal effects now in my possession, for her own and sole use, to be disposed of as she may see proper."

*Held*, that the devise passed real estate.