one for $1,100 to his wife, the defendant in this suit.—B. had insured his life some years previous to 1905 for $1,500, the policy being made payable to his wife.—In his will B. created a fund for the payment of the several legacies, and included as part of this fund the policy for $1,500 above mentioned.—*Held*, that this provision in the will did not operate as a reapportionment of the insurance money as regards this policy for $1,500, under the New Brunswick Life Insurance Act, (5 Edw. VII, c. 4), s. 13, passed in April, 1905, and that the proceeds of the same are payable to the defendant as sole beneficiary thereunder.—*Held, also*, that the widow was not bound to make an election, and that she was entitled to be paid the legacy for $1,100. *Boyne* v. *Boyne*, 4 Eq., p. 48.

19. Miscellaneous Cases.

Commission due trustees—Trustees under a will will be allowed five per cent. commission on income, and one per cent. commission on their investments,—No commission will be allowed on investments made by the testator. *In re Aaron Eaton's Estate*, 1 Eq., p. 527.

Election by legatee—A testator who died January 14th, 1914, by his last will dated January 17th, 1913, devised to his trustee certain lots of land situate in the cities of Saint John and Halifax in trust to pay one E. R. and H. A. R. or the survivor of them such sums out of the income as might be necessary for the support and maintenance of J. D. W., the testator's son (a person of unsound mind) and provide him with the necessaries and comforts of life so long as he shall live and upon his death to provide a decent Christian burial, with remainder to the testator's widow absolutely, subject to a life interest in one of the lots to the said E. R.—The will also contained a clause by which the testator devised to the trustees of St. Andrews Church, St. John, a mortgage for $30,000 which he had held on the property of the said Church but which he had assigned to his said son on March 14th, 1904.—By a codicil dated September 8, 1913, the testator ratified and confirmed his said will and bequeathed to his said son absolutely the sum of $12,600 then standing on deposit in the testator's name in the Bank of Nova Scotia. —In an action for a declaration whether the trustees of St. Andrews Church take any, and if any, what interest under the will, *held* (*per* White and McKeown JJ.), affirming the judgment of Grimmer J. in the Chancery Division (McLeod J. dissenting), that as there was nothing in the provisions of the will or in the mode by which the testator provided for the maintenance of his son which expressly or by necessary implication showed that he intended that his son should be entitled to the benefits conferred regardless of any question of election, and as the son took a substantial benefit under the will he was properly required to elect, and as the interest devised by the maintenance clause, while not saleable or assignable, has a definite ascertainable value and is a fund from which compensation can be made to the extent of the son's interest, the committee was properly directed to elect to take under the will, such election being in the best interest of the son, and in accordance with the presumed intention of the testator.—(Confirmed by S. C. of Canada.)—*Held* (*per* McLeod C. J.), that the doctrine of election can only be applied where if an election is made contrary to the will the interest that would have passed to the elector can be applied towards compensating the beneficiary disappointed by the election.—That the income devised by the maintenance clause from the property vested in the trustee could not be applied towards compensating the disappointed beneficiary and the only property devised that could be so applied is the $12,600, therefore the committee should have been directed to elect against the will and to pay the $12,600 to the trustees of St. Andrews Church. *Rosborough* v. *Trustees St. Andrews Church*, 44, p. 153.

Probate Courts, Powers of—Res judicata—Probate of a will devising real estate is not conclusive evidence of the validity of the will in the Courts of Equity. *Turner* v. *Turner*, 2 Eq., p. 535.

See also *Parks* v. *Parks*, Eq. Cas., p. 382, supra (Section 3).

WORDS AND PHRASES.

"Absence"—The word "absence" in section 65 of the City of Moncton Incorporation Act, (53 Vict., c. 60), does not mean absence from the place of trial but inability to attend to the business of the Court.—Here the police magistrate was in the court room during part of the trials but during the trials was obliged to attend before a commissioner appointed by the Provincial Government to inquire into his official conduct. *R.* v. *Steeves, Ex parte Cormier*, 39, p. 435.

"Attached"—Under the provisions of the Canada Shipping Act, R. S. C. 1906 c. 113, and the by-laws of the St. John Pilot Commissioners, a licensed pilot at the port of St. John may speak vessels from a gasoline launch, or from a row boat used in connection with the launch, provided that such launch and row boat are attached to a licensed pilot boat.—Such launch may be "attached" to a licensed pilot boat, although used by pilots to speak vessels, independently of the pilot boat and at a distance of several miles from it. *Spears* v. *St. John Pilot Commissioners*, 39, p. 495.

"Bread"—What is "bread" is a question of fact to be decided as other questions of