

Divisional Court.]

IN RE MUMBY.

[July 4.]

*Will—Construction—Gift during widowhood.*

A testator devised all his real and personal estate to his wife for her sole and absolute use, and then added "The real property while the said (wife) remains my widow. But in case my wife should again marry I request my executors to sell all my real and personal estate when my youngest child shall come of age, and that they, my executors, shall divide the proceeds between my six younger children." The widow did not marry again, and left a will devising all her real and personal estate.—

*Held*, that the absolute devise to the wife was not cut down by the subsequent words, which were applicable only to the case of the widows' marriage, and that the real estate passed under her will. Judgment of STREET, J., affirmed.

*Kilmer*, for appellants. *M. Wright*, for respondents. *D. L. McCarthy*, for Official Guardian.

Divisional Court.]

AGAR v. ESCOTT.

[July 6.]

*Joinder of actions—Defamation—Pleading—Striking out pleading.*

The plaintiffs, a married man and an unmarried woman, brought the action for damages in respect of alleged statements by the defendant on three different occasions that the plaintiffs had been criminally intimate, one of the occasions complained of being by letter to the female plaintiff. A motion to require the plaintiffs to elect which would proceed with the action, and to strike out the claim in respect of the letter to the female plaintiff, as shewing no cause of action or as embarrassing was refused, leave to amend being given to both parties. The plaintiffs thereupon amended by claiming for both damages in respect of another allegation to the same effect on another occasion, for the male plaintiff special damage, and for the female plaintiff the benefit of R.S.O. 1897, c. 68, s. 5.

*Held*, that the plaintiffs were entitled to sue in one action for damages in respect of the statements made on three occasions, there being publication as to both, and these three being a series with a common question of law and fact, but that the joinder of the claim in respect of the letter to the female plaintiff, which gave rise at most to a cause of action in the male plaintiff was improper, and that this claim unless amended so as to be simply one in aggravation of damages, should be struck out as embarrassing. Judgment of BRITTON, J., as to the joinder of parties, affirmed, and judgment of ANGLIN, J., as to the pleadings, varied.

*C. A. Moss*, for appellant. *Middleton*, for respondents.

Divisional Court.]

BRIDGE v. JOHNSTON.

[July 7.]

*Indians—Indian lands—Sale of timber—Registration—Notice.*

The locatee of Indian lands is, except as against the Crown, in the same position as if the land had been granted to him by letters patent, and can assign his interest in the land or in the timber. Actual notice of