

Chan. Div.]

NOTES OF CANADIAN CASES.

[C. P. Div.]

by the executor as so passing to him, and renounced her rights thereto, and requested the executor to treat it all as so passing. In May, 1870, A. S. made a will devising and bequeathing all her real and personal property on certain trusts. In July, 1870, she informed the executor of H. S. that she had changed her intentions as to the matter referred to in writings of 1866 above mentioned, and she forwarded another will, dated July, 1870, in which she bequeathed all the property she had as heiress and next of kin to H. S. to J. R., and appointed the same person her executor as was executor of the will of H. S. J. R. died before A. S. In 1869, and in March, 1870, A. S. had written letters to the secretary of the London City Mission, in which she had expressed her intention of carrying into effect the intentions of H. S., as expressed in his will. A. S. died in 1877, and probate of her first will of May, 1870, was granted to the executors named in it.

Held, that the impure personalty could not pass by the will to the London City Mission, and the writing of 1866 and the letters to the London City Mission did not amount to such an assignment of it, as would pass it to the charity, inasmuch as the requirements of the Mortmain Acts were not complied with.

A gift by will of property that failed to take effect by reason of the Mortmain Acts, could not be aided or set up by the party entitled to the property by anything less than what would be required to constitute a good gift by such party of the same property to the party intended to be benefitted by the gift in the will.

There can be no marshalling of assets in favour of a charity.

As to the two wills of A. S., the bequest to J. R. by the second will lapsed by reason of her death before that of H. S., and the subject of it fell into the estate of A. S., so as to pass under the former will.

Street, Q.C., for the plaintiff.

McGee, for the defendant Hoare.

Macbeth, for the other defendants.

COMMON PLEAS DIVISION.

Rose, J.]

DURNIN v. McLEAN.

County Courts—Amount liquidated by act of parties.

Action for \$228.20 being for a balance of a claim for \$1,828.20 the price of 8,310 lbs of butter at 22 cents per pound, less \$1,600 paid on account, as the next verdict was rendered for the plaintiff for the balance claimed; and the court refused to certify for costs.

Held, that the amount was liquidated by the act of the parties within the meaning of sec. 19, sub sec. 2 of R. S. O. chap. 43, the County Court Act, and therefore the plaintiff without a certificate was only entitled to County Court costs.

A motion to a judge for an order directing the defendant to pay to the plaintiff full costs without deduction or set off, was dismissed with costs.

Osler, Q. C. for the plaintiff.

Aylesworth, for the defendant.

Rose, J.]

LUNEY v. ESSERY.

Reference—Official referee—Special findings—objections to—O. J. Act, sec. 47.

At the trial of an action a compulsory order of reference was made referring "all questions arising upon the pleading in their action between the parties, including all questions of account (if any)" to an official referee "for inquiry and report."

Held, that there was a reference under O. J. A., sec. 47.

Under sec. 47 the reference is not to be a final one, but for enquiry and report for the assistance of the court. The referee therefore had no power to give a general finding, but must especially find facts and all the questions referred.

In this case the referee having made a general finding for the plaintiff, the report was referred back to him to give its specific finding.

Held, also that objection to the special findings in a report must be raised by notice of motion.

Watson, for the plaintiff.

Shepley, for the defendant.