

Boyd, C.]

IN RE DODS.

[Jan. 14.

*Will—Devise—Sale of land devised—Mortgage for purchase money—
R.S.O. c. 128, s. 25.*

The testator bequeathed all his personal estate to his wife, absolutely, and devised his land to his executors in trust for her benefit during life or widowhood, and then over. Between the date of the will and his death, the testator sold all his land, and took back a mortgage for part of the purchase money, which mortgage was an asset of his estate at his decease.

Held, that s. 25 of the Wills Act, R.S.O. c. 128, had not the effect of making the devise applicable to the interest in the land which the testator had at the time of his death by virtue of the mortgage; the mortgage was part of the personal estate and fell under the absolute bequest to the wife.

H. D. Gamble, for executors. *H. L. Dunn*, for widow. *F. W. Harcourt*, for infants.

Masters in Chambers.]

[Jan. 16.

IN RE UNDERFEED STOKER CO. OF AMERICA.

*Interpleader—Shares—Certificate and transfer—Claim for damages—
Parties out of jurisdiction—Laches—Collusion.*

A transfer of certain shares of the capital stock of the company was executed by the holder of the shares in favour of her brother-in-law on the 29th September, 1900, and application to the company was at once made by the transferee for a certificate, but, owing first to the absence of the assignee from the country, and afterwards to the objections of the company to the transfer, he was unable to obtain the certificate, and on the 25th October he was informed by the company that his transferor had set up a claim that the transfer was procured by fraud. On the 19th November the transferor brought an action against the company and the transferee to restrain the company from transferring the shares, for a declaration that the shares belonged to the plaintiff, and to set aside the transfer executed by her. On the 23rd November the transferee began an action against the company to compel the delivery of a certificate or for damages equal to the value of the shares, and for a mandatory injunction. On the 28th November the company applied for an interpleader order. Pending the application the transferee discontinued his action, and asserted his claim against the transferor and the company as a counterclaim in the action brought by the former.

Held, that the company were entitled to relief by way of interpleader, notwithstanding the claim against them for damages made by one of the claimants.

Held, also, that, although both claimants were out of the Province, and the company's head office was also outside of the Province, there was jurisdiction to make an interpleader order, the claimants themselves having