

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

tion to take 37 $\frac{1}{2}$ acres of P.'s land, and tendering \$3685 as compensation therefor and damages. This notice was abandoned, and another notice given on the 23rd November, offering the same amount of money, but reducing the quantity of land to 17 $\frac{1}{2}$ acres. The offer was refused and arbitration proceeded with. The railway cut off P.'s land from the highway, and on the plan attached to the notice no crossing was shewn. The arbitrators met on the 27th December, when the company tendered a deed binding themselves to make and maintain a crossing. The arbitrators assessed the compensation and damages at \$3516, or \$119 less than the amount tendered; but this was after taking into consideration the value of the crossing to P.

Held, by reason of the offer to make the crossing after the arbitrators met, the tender then made was not the same as that made prior to the arbitration: and, therefore, the provisions of the section as to costs did not apply.

A rule for a mandamus to the County Judge to tax the costs to the company, and for a prohibition preventing him taxing costs to P. was refused.

Quære, whether the Judge had under the circumstances any power to decide as to costs at all. If he should decide that he has such right his authority to do so may be questioned by an application to the Court for such purpose.

G. T. Blackstock, for the company.

McMichael, Q.C., and Shepley, contra.

CHANCERY DIVISION.

Ferguson, J.]

[March 4.]

LONDON AND CANADIAN CO. v. WALLACE.

Will—Construction—Direction to carry on testator's business—Power to mortgage.

A testator left his real and personal estate to trustees in trust to sell and invest the proceeds in such securities as they should think proper, and distribute the proceeds among his family as therein directed, and then proceeded:—

"Until sold as aforesaid, I direct that my trustees keep my schooners employed for freight and hire as far as possible, and for such purpose to engage all necessary assistants, and keep the said vessels in repair; and may store grain and other goods and merchandise in my warehouse for hire or storage; and may take such action as they think advisable in common with other joint proprietors to work and develope my interest in the mine known as

'The Baring Gold Mine,' but the outlay by them shall not at any time exceed \$1,000."

Except this liberty to employ a sum not exceeding \$1,000 in the development of the gold mine, there was no authority given by the will to employ any part of the estate in carrying on the business beyond what was embarked in it at the time of the testator's death.

The trustees carried on the business of the schooners and, as I understand, of the warehouse, and made certain repairs to the vessels, and by so doing became indebted to the Ontario Bank, and for the purpose of meeting this indebtedness contracted by themselves in carrying on the business, they made the mortgage in question in this action to the plaintiffs, who now sought payment or foreclosure.

The estate of the testator was not charged by his will with any sum except his debts, which were all paid before the execution of the mortgage.

It was shown that the plaintiffs had notice of the purpose for which the money borrowed on the mortgage was required.

Held, that the mortgage in question could not be upheld as a charge upon the property, and R.S.O. c. 107, secs. 7, 17 and 20, had no application to the case, though the plaintiffs were entitled to a personal order against those who had executed the mortgage.

All that a will, which directs the testator's business to be carried on, authorizes executors to do is to continue in it so much of the testator's estate as may be embarked in it at the time of his death.

Smith v. Smith, 13 Gr. 81, followed.

F. Arnoldi, for the plaintiffs.

Moss, Q.C., for the defendants.

Ferguson, J.]

[March 4.]

KINCAID v. READ.

Husband and wife—Debtor and creditor—Liability of wife for husband's contract.

Plaintiff agreed with J. R. to build a house on certain land for \$850. After building the house he discovered the land belonged not to J. R., but to J. R.'s wife, who at the time of the agreement was an infant, and was in no way a party to it. About a year afterwards J. R. and his wife sold and conveyed the land and house to M., an innocent purchaser. The plaintiff was only paid a portion of the \$850.