

RECENT ENGLISH DECISIONS.

A TRAMWAY CO. IS NOT A RAILWAY CO.

The case of *In re Brantford v. Isleworth Tramways Company*, 26 Ch. D. 527, is worth noting as being a judicial determination of Bacon, V. C., that a "Tramway Company" is not a "Railway Company."

WILL—BEQUEST ON INDEFINITE TRUST—NON-COMMUNICATION OF TRUST TO TRUSTEE IN TESTATOR'S LIFE-TIME.

In re Boyes, Boyes v. Carritt, 26 Ch. D. 531, illustrates the danger to which testators expose themselves, of defeating their own intentions by trusting to unattested papers to control the effect of a formally executed will.

Mr. Boyes, the testator, desired to provide for a certain lady and her child, whose names he did not wish to appear in his will; he therefore, on 1st June, 1880, made a will in favour of his solicitor and friend, Mr. Carritt, the defendant, purporting to devise and bequeath all his property absolutely to him, but subject to a verbal understanding that he would give him further written directions as to the persons for whose benefit he was to hold the property.

The testator went abroad and made no further communication to Mr. Carritt of his wishes, and died in April, 1882. After his death two papers were found in his possession. One, dated 10th February, 1880 (which was proved to be a mistake for 1881), was in these words:

"F. B. CARRITT, ESQ., I wish you to have £25 of any property of which I may die possessed for the purchase of any trinket *in memoriam*, everything else I give to Nell Brown, formerly Sears, and I appoint you sole trustee, to act at your discretion.

G. E. BOYES."

The other letter was in these terms:

"F. B. CARRITT, ESQ.,

DEAR SIR,—In case of my death I wish Nell Brown to have all except £25 in my memory.

G. E. BOYES."

Under these circumstances, the next of kin claimed the property, which consisted of personal estate.

KAY, J., held they were entitled, and that the trust in favour of Nell Brown was void. He said "no case has ever yet decided that a testator can by imposing a trust upon his devisee or legatee, the object of which he does not communicate to him, enable himself to evade the *Statute of Wills* by declaring those objects in an unattested paper found after his death." . . . "The defendant having admitted he is only a trustee, I must hold on the authority of *Muckleston v. Brown*, 6 Ves. 52, *Briggs v. Penny*, 3 Mc. & G. 546, and *Johnson v. Ball*, 5 D. G. & Sm. 85, that he is trustee of this property for the next of kin of the testator."

MORTGAGOR—RIGHT TO CALL FOR ASSIGNMENT TO THIRD PERSON.

Alderson v. Elgey, 26 Ch. D. 567, is a decision under the Conveyancing and Law of Property Act, 1881, s. 15, which provides:—"Where a mortgagor is entitled to redeem, he shall, by virtue of this Act, have power to require the mortgagee, instead of reconveying, and on the terms on which he would be bound to reconvey, to assign the mortgage debt and convey the mortgaged property to any third person as the mortgagor directs; and the mortgagee shall, by virtue of this Act, be bound to assign and convey accordingly." In this case a tenant for life who had failed to keep down the interest obtained an order permitting him to redeem; the mortgagee was also entitled in remainder to part of the property covered by the mortgage; and it was held by Chitty J. that the tenant for life could not require an absolute transfer to his nominee under the above section, but only a transfer on such terms as he himself would be entitled to claim a re-conveyance. In Ontario, where we have no such express statutory provision the case would be *a fortiori*.