The declaration avers that the defendant was sub-treasurer of school moneys for the Township of Douro. He could, as such, only have so much of the county school fund as had been apportioned to the common schools of that township, or an authority to advance other moneys in anticipation of it. The order, to be lawful, ought to have been drawn upon that fund, and drawn in accordance with the 2nd sub-sec. of sec. 91 of the Act. The duty of the local superintendent was to give to any qualified teacher, but to no other, on the order of the trustees of any school section, a cheque upon the county treasurer or sub-treasurer for any sum of money apportioned and due to such section.

The local superintendent cannot give a cheque for the payment of money to a teacher without the order of the trustees of the school section, nor for any money which has not been apportioned and due to such section. But it is not averred in the declaration, nor does it appear on the face of the cheque set out, that it was given on the order of the trustees, nor that it was drawn upon the money due and apportioned to that section. It is in these words: "Douro, January 22nd, 1867. To sub-treasurer school moneys, Douro: Pay to Mr. Michael Welsh, or order, twenty-seven dollars and eighty cents, and charge to account of county assessment for 1866. ROBERT CASEMENT, Local Superintendent Common Schools, Douro. $27.80." We can understand why a cheque should not be given, unless on the order of the trustees. They themselves may have advanced to the teacher his salary from moneys levied by their authority, and may desire to leave the school fund for a subsequent period.

We can see no reason why this order was not drawn properly, both in form and substance, for the chief superintendent has taken great pains to furnish local superintendents with forms and directions in the School Manual. The local superintendent had only authority to draw an order on the sub-treasurer for money apportioned and due the section where the teacher had taught. He did not draw it from money so apportioned, or from any specific money, but directed the sub-treasurer to charge it to the account of county assessment for 1866. The order of the trustees, if any such existed in this case, was his authority for drawing the cheque, and to the form now in use there might be added, "in accordance with the order of the trustees, dated the —— day of ——."

We are, therefore, of opinion that this order, as it is called in the declaration, is not a legal cheque in accordance with the statute, and cannot be enforced; and both counts are bad, in not showing that the cheque was drawn on the order of the trustees, and in setting out a cheque void on its face, because drawn on a fund over which the local superintendent had no control, and bad in not showing that the sub-treasurer had money in his hands belonging to the school section, or that the County Council had made provision to enable him to pay the amount. This disposes of the case, so that we need not allude to the other questions raised on these pleadings.

Judgment for defendant on demurrer.

As to the right to mandamus, see *Kendall* v. *King* (17 C.B. 483); *Hall* v. *Taylor* (E. B. & E. 107); *Ward* v. *Lowndes* (1 E. & E. 940–956); *Benson* v. *Paul* (6 E. & E. 273); *Norris* v. *Irish Land Company* (8 E. & B. 512); *Bayle* v. *Beavan* (1 H. & C. 500).

ENGLISH REPORTS.

CHANCERY.

STEIN v. RITHERDON.

Will—Construction—"Estate and effects"—Real estate.

The word "estate," in a will, is to be construed as passing both real and personal estate, even though the accompanying expressions are more applicable to personal estate only, unless the context absolutely negatives such construction.

Pogson v. *Thomas*, 6 Bing. N. C. 337, remarked on.

[V. C. M., Feb. 19, 1868,—16 W. R. 477.]

One of the points which arose in this case was, whether the words "estate and effects" in a will were sufficient to pass a freehold house belonging to the testator, Talbot Ritherdon. The material clause of the will, which was dated June 5, 1866, was the following:—

"I give and bequeath all my household furniture plate linen musical instruments books wine ready money goods and chattels unto my daughter Adelaide Ritherdon for her own use and disposal absolutely and as to all the *rest and residues of my estate and effects* I give and bequeath the same unto Charles Stein and William Sutton and the survivivor of them their or his executors administrators or assigns (and who are hereinafter respectively designated as 'my trustees') upon trust with all convenient speed after my decease to collect get in and receive all debts or other moneys due and owing or otherwise payable to me at the time of my decease and to sell and convert into money any government stocks or shares in public or other companies of which I may die possessed and call in any moneys which at the time of my decease may be out on mortgage at interest or continue the said stocks and shares and mortgage moneys in these their present investments as to my trustees shall in their or his discretion seem most advantageous for the benefit of the said trust estates and upon trust as to all the capital moneys estate and premises which shall respectively come to the hands of my trustees or by virtue of my will to lay out and invest the same in the parliamentary stocks or public funds of Great Britain or at interest on real leaseholds or other security or securities (not being personal nor in Ireland) in their or his names or name with full power from time to time to alter vary transpose and change the same as in their or his discretion shall seem fit. And I declare that my trustees shall stand and be possessed of the interest dividends and annual produce thereof and of such interest and dividends as may be due to me at the time of my decease upon trust, &c"

There was no clause in the will to pass a freehold house in Dover, of which the testator was possessed, unless it was held to pass under the above words.

The heiress at law of the testator contended that the freehold house descended to her, and did not pass by the will.

The trustees of the will filed a bill, praying among other things for a declaration whether the real estate of the testator was devised by the will to the trustees, or was undisposed of and descended to the heiress at law.

Pearson, Q. C., and *Buchanan*, for the plaintiff, cited *Saumarez* v. *Saumarez*, 4 M. and Cr. 331; *O'Toole* v. *Browne*, 3 Ell. & Bl. 572, 2 W. R.