

deposit at the sale is liable personally as well as his client, and may be compelled to pay it into court. See Con. Rule 102, and notes in Holmsted & Langton.

PROBATE—WILL—TESTAMENTARY CAPACITY—EVIDENCE—REPORT REQUIRED BY STATUTE TO BE DESTROYED.

In *Roe v. Nix*, (1893) P. 55, a question on the law of evidence arose which deserves attention. By a certain statute persons were authorized to visit lunatics, and were required to make reports on any cases they saw fit to the Lord Chancellor. These reports were to be filed and kept secret in the office of the visitors, and the statute expressly provided that they were to be destroyed on the death of the patient to whom they related. The will of a person who had been a lunatic was contested on the ground of want of testamentary capacity, and on the trial of the action it was sought to compel the production of reports made pursuant to the statute above referred to, and which were still in existence; but Barnes, J., after consultation with Lord Esher, M.R., and all the Lords Justices, held that such reports were inadmissible, and must be regarded for all purposes as though they were actually destroyed on the death of the patient.

WILL—ADEMPTION—SPECIFIC DEVISE—DEVISED ESTATE SOLD, AND MORTGAGE TAKEN FOR PURCHASE MONEY—WILLS ACT (1 VICT., c. 26), SS. 23, 24 (R.S.O. c. 109, ss. 25, 26).

In *re Clowes*, (1893), 1 Ch. 214, a testator had, by his will, devised a parcel of land, and after the making of the will had sold the land and taken back a re-conveyance in fee of the property by way of mortgage to secure part of the purchase money. The testator having died without altering his will, the question was raised whether or not under the devise of the land the mortgage would pass to the devisee. The Vice-Chancellor of Lancaster held that it did, but the Court of Appeal (Lindley, Bowen, and Smith, L.JJ.) was unable to agree with him. As Lindley, L.J. puts the point, "Money charged on land does not pass under a devise of land," and that rule, he said, cannot be got over by reading the will as provided by the Wills Act, ss. 23, 24 (R.S.O., c. 109, ss. 25, 26). According to the learned judge, the effect of reading the will as provided by those sections was to make the devisee, devisee of the house, but only as trustee for the persons entitled to the beneficial interest in the money secured thereon. In other words, the