

held to be intra vires of the local legislature. On the second point the Committee came to the conclusion that the Court had been properly constituted.

REPORTS AND NOTES OF CASES.

Province of Ontario.

COURT OF APPEAL.

Moss, J.A.]

[Feb. 7.

RE HOLLAND.

Succession duty—Chargeable against legacies—Payment of legacy within a year—Set off.

The direction in a will to executors to pay debts, funeral and testamentary expenses, does not operate so as to make the payment of the succession duty, payable under R.S.O. 1897, c. 24, a charge on the residue and to exonerate the legacies from payment thereof. *Manning v. Robertson*, (1898) 29 O.R. 483, followed.

The rule that executors are not bound to pay pecuniary legacies before the expiration of a year from the testator's death does not prevent them, where no time is fixed for payment, and there is sufficient to pay debts, legacies and charges, from paying a legacy forthwith, and so to allow the amount thereof to be set off against a mortgage due by a legatee to the estate.

Clute, K.C., for executors. *R. U. McPherson*, for residuary legatee.

Moss, J.A.]

[Feb. 7.

RE EVANS.

Will—Sickness—Provision, in case of—Executors' discretionary power of—Personal representatives.

A testatrix by her will bequeathed a sum of money to a son, with a direction that her executors should invest the same and pay to the son half the interest, and in case of his sickness to advance to him such portion of the principal money as they should think necessary; and in case of his death, after paying the funeral and other necessary expenses to divide the amount equally amongst her other surviving children; and by a residuary clause she gave the residue of her estate to her children in equal shares.