

bot' died, one of them intestate. The executrix of the other applied for probate to the mother's estate, without citing the grandson, who had not been heard of since 1875, when he had gone to Australia. The application was granted.

ARBITRATION—PRACTICE—STAYING ACTION—BIAS OF ARBITRATOR—ACTION EXTENDING TO MATTERS NOT COVERED BY SUBMISSION—ARBITRATION ACT, 1889 (52 & 53 VICT., C. 49), S. 4—(R.S.C., C. 53, S. 38).

*Ives v. Willans*, (1894) 2 Ch. 478; 7 R. July 79, is a case in which the other branch of the Court of Appeal (Lindley, Lopes, and Kay, L.JJ.) arrived at the same conclusion as was reached in *Eckersley v. Mersey Docks*, *supra*. An application was made to Kekewich, J., to stay the action, because the parties had agreed to refer the matter in dispute to arbitration. The motion was resisted on two grounds, viz., that a part of the relief claimed was not covered by the submission; and that the arbitrator was the defendants' own engineer, and would probably be biased. Kekewich, J., made the order staying the action, except as to the matters not covered by the submission. This order was affirmed. The court being of opinion that the fact that a small portion of the relief claimed was not within the submission was not in itself a sufficient reason for refusing to stay the action as to the principal part of the relief claimed, which was within the submission. Also, that as the plaintiffs had agreed to refer the matters to the defendants' engineer they must, before they could be relieved from that agreement, show, not merely that the arbitrator would be a judge of his own acts, but that he had been guilty of such misconduct as to make it probable that he would not act fairly.

WILL—CONSTRUCTION—SHIFTING CLAUSE—"POSSESSION OR RECEIPT OF RENTS AND PROFITS," MEANING OF.

*Leslie v. Rothes*, (1894) 2 Ch. 499, is one of those cases in which a will is construed so as to defeat what was most probably the real intention of the testator. By the will in question certain estate was devised to certain persons successively in tail, subject to a proviso that if any person for the time being entitled to the possession (had not that proviso been inserted) should be an infant, the trustees of the will should enter into the possession or receipts and profits of the estate, and manage the same, and pay the necessary outgoings, and apply such sum as they should think fit towards the