

reference was ordered to an official referee "for inquiry and report pursuant to sec. 101 of the Judicature Act, and rule 552 of the High Court of Justice." The referee reported that the drain was improperly constructed and that V. was entitled to \$600 damages. The municipality appealed to the Divisional Court from the report, and the Court held that the appeal was too late, no notice having been given within the time required by Cons. Rule 848, and refused to extend the time for appealing. A motion for judgment on the report was also made by V. to the Court, on which it was claimed on behalf of the municipality that the whole case should be gone into upon the evidence, which the Court refused to do.

*Held*, affirming the decision of the Court of Appeal, that the appeal not having been brought within one month from the date of the report, as required by Cons. Rule 848, it was too late; that the report had to be filed before the appeal could be brought, but the time could not be enlarged by delay in filing it; and that the refusal to extend the time was an exercise of judicial discretion with which this Court would not interfere.

*Held*, also, Gwynne, J., dissenting, that the report having been confirmed by lapse of time and not appealed against, the court on the motion for judgment was not at liberty to go into the whole case upon the evidence, but was bound to adopt the referee's findings and to give the judgment which those findings called for. *Freeborn v. Vandusen* (15 Ont. App. R. 267) approved of and followed.

Appeal dismissed with costs.

*Wilson, Q. C.*, for the appellants.

*Douglas, Q. C., & Langton, Q. C.*, for the respondent.

24 June, 1895.

Ontario.]

#### LUNDY V. LUNDY.

*Will—Devise—Death of testator caused by devisee—Manslaughter.*

In an action for a declaration as to title to land the defendant claimed under a deed from his brother, who derived title under the will of his wife for causing whose death he had been convicted of manslaughter and sentenced to imprisonment.

*Held*, reversing the decision of the Court of Appeal, (21 Ont. App. R. 560) *Taschereau, J.*, dissenting, and restoring the judg-