(*b*) A ratepayer, being a Roman Catholic and appearing in the assessment roll as a Roman Catholic and supporter of Separate Schools, who has not given the notice in writing of being such supporter mentioned in section 40 of the Separate Schools Act is not (nor are the other ratepayers) estopped from claiming in the following or future year that he should not be placed as a supporter of Separate Schools with reference to the assessment of such year, although he has not given notice of withdrawal mentioned in section 47 of the Separate Schools Act.

Moss, Q.C., for the Attorney-General.
Dr. O'Sullivan, contra.

Robertson, J.] [Dec. 23.

RE IRON CLAY PAVING COMPANY.

Company—Director—Purchase by director of property of company sold under mortgage—Liability to account—Winding up—Constitutional law.

One Turner, a director of the Company, purchased property of the Company in 1888 at a sale by mortgagees of the property for a sum of $8,400, and in 1889 he obtained $23,000 for the same property. In winding up proceedings of the Company under the Dominion Winding Up Act the liquidator claimed that he could not as director purchase for his own benefit, but that he held the land as a trustee for the Company.

Held, affirming the decision of the Master in Ordinary that this contention was correct, and that Turner was liable and accountable for whatever profit he might have received on a sale by him of the lands, and that by reason of his refusing to pay over or to account for such profits he had become properly adjudged guilty of a breach of trust within the meaning of section 83 of the Dominion Winding up Act.

Held, also that the Ontario Winding up Acts do not apply when the application for winding up is made by a creditor on the ground of insolvency, because the local Legislature has no jurisdiction in matters of insolvency.

W. Cassels, Q.C., and *D. McDonald* for Turner.

C. Robinson, Q.C., and LeVesconte for Liquidator.

BOYD, C.] [Nov. 27, 1889.

MACKLIN *et al. vs.* DANIEL *et al.*

Will—Devisee—Investments for legacies—"Paying out"—What time intended—Division of residue.

A testator gave two legacies to become due and payable in three and four years respectively from his decease, and instructed his executors to invest the same and pay the interest to the beneficiaries, and directed the investment of two separate sums for the benefit of two other devisees (one of whom was his sister), with a direction to pay them the interest for their lives, and proceeded, "And should there be a residue or surplus after paying out the foregoing bequests, I will that the same be equally divided between my sisters and S. G. B., or the survivors of them at the time of winding up the affairs."

Held, that the time for the division of the residue was when sufficient funds were invested to produce the legacies and fulfil the directions of the will, and that it was not postponed until the legacies were paid over or to any subsequent time.

A. Cassels for the executors, the plaintiffs.

J. C. Hamilton, for Mrs. S. J. Reesor, a residuary devisee.

W. M. Douglas for the two sisters.

Boyd, C.] [Dec. 20.

PHELPS *v.* ST. CATHARINES & NIAGARA RAILWAY CO.

Railways—Bonds—Debentures—Charge on the "undertaking"—Earnings of Road—44 Vict. c. 73, O. s. 35.

Appeal from an order of the Local Judge at St. Catharines directing an issue between the plaintiffs who sought to attach certain moneys of the defendants, being a bank deposit of moneys collected from the earnings of the Road on the one part, and the bond holders of the defendants who claim a charge upon said moneys on the other part.

The Act of Incorporation of the defendants Railway, 44 Vict. chap. 73, O. sec. 33, enacted that the bonds of the defendants were to be "taken and considered to be the first and preferential claims and charges upon the undertaking."

Held, that the bond holders under the above section were entitled to a preferential charge