

S.C.]

NOTES OF CASES.

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the residue a legacy of \$4,000 to his brother Duncan Robertson, and the ultimate he directs to be equally divided among his children upon the same trusts with regard to his daughters as are hereinbefore declared with respect to the said estate in the said schedules mentioned.

The rents and profits of the whole estate left by the testator proved insufficient after paying the annuity of \$10,000 to the widow, and the rent and taxes upon his house in London, to pay in full the several sums of \$1,600 a year to each of the daughters during the life of their mother, and the question raised on this appeal was whether their executors and trustees had power to sell or mortgage any part of the corpus or apply the funds of the corpus of the property to make up the deficiency.

Held, on appeal, that the annuities given to the appellants and the arrears of their annuities are chargeable on the *corpus* of the real and personal estate subject to the right of the widow to have a sufficient sum set apart to provide for her annuity.

Weldon Q.C., for the Misses Robertson.

Gilbert, for Mrs. Almon.

Kaye, Q.C., for respondents.

TEMPLE V. CLOSE.

Trover—Vendor and purchaser—Property in goods.

This was an action of trover for bricks. The plaintiff agreed with one Thomas, a brick-maker, who had a kiln of bricks burnt, ready for use, containing somewhere in the vicinity of 100,000 bricks, to purchase, and paid for a portion of them, 50,000 according to sample. Thomas delivered to plaintiff 16,000, and the balance of the bricks was taken by the defendant as Sheriff of York, under an execution against Thomas. The question to be decided on this appeal was, whether the bricks were the plaintiff's property, under what had taken place between Thomas and him, so as to exempt them from seizure under the execution.

Held, that there was no sale of a specific property under the contract, and that the property in the bricks did not pass to the purchaser until the bricks had been selected.

G. F. Gregory, for appellant.

Wetmore, Q.C., for respondent.

Appeal allowed with costs.

DOMINION TELEGRAPH COMPANY V. GILCHRIST.

Trespass—Right of Company to cut ornamental trees.

The servants of the Company, in erecting their line through Norton, King's County, cut down ornamental trees on Dr. Gilchrist's property, claiming the right to do so under their act of incorporation. In an action of trespass, tried at King's County, Dr. Gilchrist obtained a verdict for \$235 damages, which was sustained by the Supreme Court of New Brunswick. The Company appealed on the following grounds: 1. That the practice of the Court not to allow the defendant to cross-examine a witness to prove his plea, as decided in *Atkinson v. Smith*, 4 Allen, 309, was erroneous; 2. That as the Company had the right to cut down ornamental or shade trees where necessary for the erection, use or safety of their line, they were the judges of that necessity; and 3. That the plaintiff's remedy was under the clause in the Company's Act referring to arbitration, and ousted the jurisdiction of the courts.

Held, overruling these objections, that the Company should be held to a strict construction of their act of incorporation, and were bound to prove that it was necessary for the erection, use or safety of their line to cut these trees, and that having failed to do so, they were liable.

Hector Cameron, Q. C. for appellant.

C. W. Weldon, Q. C., and *Burbridge*, for respondent.

Appeal dismissed with costs.

POWER V. ELLIS.

Witness—Refusal to answer questions on cross-examination—Privileged communications—Misdirection.

Plaintiff, (respondent on appeal), a teller in a bank in New York, absconded with the funds of the bank, and came to St. John, N. B., where he was arrested by the defendant, (appellant on appeal), a detective residing in Halifax, N. S. and imprisoned in the police station for several hours; no charge having been made against him, he was released. While plaintiff was a prisoner at the police station, the defendant went to plaintiff's boarding house and saw his