

denied that the plaintiffs were the next of kin of the testator, and alleged that he had no relatives. By her affidavit of documents she stated that she had in her possession, in her personal capacity, but not as administratrix, certain photographs of the testator, which she objected to produce. The plaintiffs sought production with a view of establishing the identity of a relative of theirs with the testator.

*Held*, that the photographs in question were "documents" within the meaning of Rule 507, and were not privileged nor protected, and therefore must be produced.

*W. M. Douglas*, for the plaintiffs.

*Aylesworth, Q.C.*, for the defendant.

ARMOUR, C.J.]

[June 5.

IN RE BIKELY AND TORONTO, HAMILTON AND BUFFALO R. W. CO.

*Railways—Lands injuriously affected—Arbitration and award—51 Vict., c. 20, ss. 90, 92, 144 (D)—Compensation—Damages—Operation of railway—Interest.*

A claimant entitled under the Railway Act of Canada, 51 Vict., c. 29, to compensation for injury to lands by reason of a railway, owing to alterations in the grades of streets and other structural alterations, is also, having regard to c. 90, 92 and 144, entitled to an award of damages arising in respect of the operation of the railway, and to interest upon the amounts awarded, notwithstanding that no part of such lands has been taken for the railway.

*Hammersmith, &c., R. W. Co. v. Brand*, L.R. 4 H.L. 171, distinguished.

*Aylesworth, Q.C.*, and *F. R. Waddell*, for the claimant.

*W. Arcy Tate*, for the railway company.

ARMOUR, C.J.]

[June 8.

IN RE CONNOR, HUNTER vs. CONNOR.

*Gift—Evidence—Burden of proof—Legacy—Advancement—Adoption—Subsequent gift.*

The burden of proving a gift lies upon the donee, and the evidence in support of it must be clear and convincing, strong and satisfactory.

In a proceeding for the administration of the estate of a deceased testator there was a contest as to a portion of his property of which it was alleged he had made gifts to two of his children in his lifetime.

The testator was over ninety years of age when the gift to his daughter was said to have been made, and was living with her and under her influence; no one was present when the alleged gift was said to have been made except the donor and the donee; the money which was the subject of the alleged gift was lying in the house; and the evidence in corroboration was given by a girl, at that time fourteen years of age, who at the age of seven had been taken to be brought up by the donee, and who was under her influence, and her evidence was that of conversations alleged to have been heard two years before.