

But the will directed the bequest to be paid out of a mixed fund derived from the sale of land and personalty ;

Held, so far as the real estate was concerned, the gift failed, and a direction was given as to how the fund was to be applied.

E. G. Porter for the plaintiffs.

W. B. Northrup for the residuary devisee.

F. T. Wallbridge for the trustees.

BOYD, C.]

[Jan. 29.

RE STEPHENSON.

KIRKNEE v. MALLOY.

Executors—Surviving executor's executor—Blended fund—Transmission of, in trust—Vendor and purchaser.

When a testator directs a sale of both real and personal property, and the money to be divided, thus causing a blending of both for the purposes of sale and distribution, and names two executors, the death of one of them does not disqualify the survivor, in whom the whole executorial character vests, and the survivor can transmit the power to his executor, and thus preserve the chain of representation.

Quære in the case of land *simpliciter*.

W. Cook for the purchasers.

Hodge for the vendor.

Div'l Court.]

[Jan. 22.

MOYLE v. EDMUNDS ET AL.

Guarantee—Construction of.

A guarantee in the following words, "I hereby become responsible to H. M. for payment for goods sold to F. E. for feed store situate . . . up to \$400, was given at a time when the debt due by F. E. to H. M. was \$280.85.

Held, (affirming the judgment of ARMOUR, C.J.,) that the guarantee covered the amount then due, and a further sum sufficient to make it up to \$400.

Chalmers v. Victors, 18 L.T.N.S. 481, followed.

Alnutt v. Ashenden, 5 M. & G. 392, criticized.

Biggs, Q.C., for the appeal.

G. G. S. Lindsay, *contra*.

Div'l Court.]

[Jan. 22.

ENTNER v. BENNEWEIS.

Seduction—During invalid father's lifetime—Action by mother—Service—Evidence.

In an action of seduction brought by a mother, evidence to show that the daughter was servant to her mother during the lifetime of the father, on account