

Britton, J.] IN RE HASKILL AND G.T.R.W. CO. [March 28.

Railway—Expropriation of land—Notice—Withdrawal after taking possession—New notice for same land—Invalidity—Increase in compensation money—Arbitrator—Costs.

A railway company having given notice of requiring certain land for their railway and having taken possession of it, cannot abandon their notice and give a new notice for the same land. *Canadian Pacific R.W. Co. v. Little Seminary of Ste. Therese*, 15 S.C.R. 606, applied.

Where the company named in their new notice a larger sum of compensation money than in their original one, and a different arbitrator;

Held, upon a motion by the landowner to compel the company to proceed with the arbitration that although the new notice was ineffective, and the arbitration could proceed only under the original notice, the appointment of a new arbitrator should be confirmed (the landowner not objecting), and the company should be allowed to increase their offer, but not so as to prejudice the owner as to anything that might have occurred before the new notice, and the offer of the increased sum might be taken into consideration upon the question of costs.

W. F. Kerr, for landowner. *D. L. McCarthy*, for railway company.

Boyd, C.] IN RE ARCHER. [April 4.

Wil.—Construction—Gift to a class—Ascertainment of persons entitled.

A testator bequeathed the sum of \$500, as to income to be applied for the support of the testator's grandchildren, children of his son John, and as to principal to be paid to them equally as they respectively attained the age of twenty-one years.

Held, that the members of the class entitled to share were to be ascertained at the time when the eldest of the class attained the age of twenty-one years and that those grandchildren born after the death of the testatrix and before that time were entitled to share.

M. D. Fraser, and *F. P. Betts*, for various parties.

Idington, J.] DOYLE v. DIAMOND FLINT GLASS CO. [April 19.

Executor and administrator—Lord Campbell's Act—Action before administration.

An action was brought to recover damages because of the death of a workman, the plaintiff alleging that she was his widow. Her status was put in issue and she obtained letters of administration as the deceased's widow and by amendment claimed also as administratrix:

Held, that having failed to prove her status as widow she could not succeed as administratrix, the rule that letters of administration relate back