

Chan. Div.]

NOTES OF CASES.

[Cham.

less, shall be paid to the four Churches of England in the townships of Orford and Howard in four equal parts to each such churches as follows: To Trinity Church, Howard: St. John's Church, Morpeth; St. ——— Church, Highgate, and the proposed new church at Clearville, and to be applied by my executors in the payment of any debt or debts upon each of such churches respectively; and in case of no debt, or their being a balance or residue after the payment of such debt or debts on each of such churches, respectively, then the residue, (if any) is to be paid by my executors to the churchwardens of such church, to be held by them in trust; and said money is to be invested by such churchwardens, and the interest arising therefrom is to be paid to the Incumbent of said church as a portion of his salary or stipend."

Upon a special case stated for the opinion of the Court it was shown that there was a large debt existing on the Morpeth Church for money borrowed on mortgage wherewith to pay off the building debts. The church at Clearville was not built at the time of the testator's death, but some debts were existing in respect of materials and work on the foundation:

Held, (1) that the mortgage debt on the Morpeth Church could not be considered as a building debt; but if it could be so considered the bequest to pay the same would be void, under the statutes of the Mortmain. (2) That as to the Clearville Church, which was in course of erection, the building debts would form a lien on the lands from the beginning of the work under the Mechanics' Lien Act, and the bequest to pay off those debts would therefore be void, unless the work was being performed in such a manner as excluded the creation of a lien on the land. (3) That the bequest for the benefit of the Incumbent would have been valid if the investment had been directed to be made upon realty; but as the trust might be carried out by investing on personalty the bequest was valid if as invested. (4) That the amount to which the Incumbent would be entitled was the residue after deducting the void bequests for debts.

W. Cassels, for plaintiffs.

J. Hoskin, Q.C., for defendants.

Atkinson, for the trustees.

Proudfoot, J.]

[Oct. 19

HARDING v. CARDIFF.

Municipal Act — Award — Costs — Railway charters.

There is a distinction between the rights conferred upon municipal corporations and railway companies respectively to expropriate property, the former existing for the public good, the latter being commercial enterprises only. The charters of the latter are therefore more rigidly construed than are the powers of a municipal corporation. Upon a construction of sections 373 and 456 of the Municipal Act a municipal corporation has power to enter upon and take lands for the purposes permitted by the Act without first making compensation to the owner who is not entitled to insist upon payment as a condition precedent to the entry of the corporation.

Where a municipal corporation had so entered and a bill to set aside an award for improper conduct of the arbitrators and inadequacy of compensation failed upon these grounds, the Court (PROUDFOOT, J.) on dismissing the bill ordered the plaintiff to pay all costs the corporation having properly exercised their statutory rights.

Moss, Q. C., for plaintiff.

S. H. Blake, Q. C., for defendant.

CHAMBERS.

Proudfoot J.]

[Oct. 12

FOSTER v. MORDEN.

Certificate of Master—Confirmation of G. O.
[642.

The Master certified that an application was made to him on notice of motion to disallow the accounts of the defendant filed under his order, as not sufficient in substance and form; that he heard the solicitors of the parties and examined the accounts, and found that they did not comply with his order on certain specified particulars.

The Referee before vacation set aside an order for attachment for non-production of accounts, because this certificate on which the attaching order was based had not been con