

Held, they must be regarded as part of the realty, and as covered by plaintiff's mortgage.

Dickson v. Hunter, 29 Gr. 73 approved.

Judgment for plaintiff as prayed - (with a reference as to damages), as to all the goods except certain specified articles, with full costs of suit.

Ludwig, for plaintiffs.

A. Hoskin, Q. C., and D. E. Thomson, Q. C., for defendants.

ENGLAND.

WRIGHT, J.] [103 L. T., 246.

HUNT v. HUNT.

Divorce Proceedings—Separation Deed not to Molest.

A deed of separation contained a covenant by the husband not to molest his wife. Both parties were British subjects. The husband now served notice on the wife that he intended to proceed for a divorce in Texas, and that he intended to examine witnesses in England. The wife sought an injunction to prevent her husband molesting her, and also claimed damages.

Held, that the wife was entitled to succeed, for though the *bona fide* taking of divorce proceedings in England would not have amounted to molestation, yet taking proceedings in Texas, where there could be no right to interfere, the parties being English, was vexatious and unreasonable, and amounted to a breach of the covenant. (Wright, J.)

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STIRLING, J.]

RE ASHTON. INGRAM v. PAPILLON.

Double Portions.

The rule of equity that a provision by will for a child is satisfied or adeemed *pro tanto* by a subsequent provision *inter vivos* applies where both provisions are made by the father, on whom the duty of making a provision for his child *prima facie* falls; but it does not apply where both provisions are made by the

mother or grandfather or any other person, in the absence of evidence which satisfies the Court that such mother, grandfather or other person has put her or himself *in loco parentis*. (32 Eng. L. J. 419.)

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STIRLING, J.]

[Aug. 5.

IN RE STUART. SMITH v. STUART.

Trustee—Breach of Trust—Liability.

In determining whether a trustee has acted reasonably or not, the Court will consider whether it is probable that he would have acted in the matter as he did if he had been acting in a matter of his own.

A trustee invested trust funds upon mortgage on the advice of his solicitor, and relying upon him and on valuations of surveyors employed by him. The valuations did not satisfy the requirements of section 8 of the (Imp.) Trustee Act, 1893—firstly, because the solicitor acted in respect of the mortgages on behalf also of the mortgagors, and the surveyors employed by him were not instructed and employed independently of the mortgagors, and it did not appear that the trustee reasonably believed they were instructed and employed independently of the mortgagors; and, secondly, because in all the valuations except one no values were stated of the properties proposed to be mortgaged; all that was given being the amounts respectively for which the valuer considered the properties to be good securities, and in the case of the only one in which the value was given the amount lent exceeded that value. The mortgages proved insufficient, and no special circumstances were put forward.

Held, that the trustee would not have advanced the money without further inquiry if he had been dealing with money of his own, and that it was not a case for the Court to exercise its jurisdiction under the Judicial Trustees Act, 1896, to give him relief from personal liability for a breach of trust.