she was willing to make the annuity a first charge on the property, the testator's widow could not insist on redeeming the mortgage. *Long* v. *Long*, 16 Gr. 239; *S. C.*, 17 Gr. 251.

See WILL, IV. 3.

ANSWER.

See PLEADING—PLEADING IN EQUITY BEFORE THE JUDICATURE ACT, II.

APPEAL.

I. APPEAL GENERALLY.

Abatement.]—An administrator will not be allowed to revive a judgment in favour of his intestate, pending an appeal to the Court of the Governor-in-Council, or the King and Privy Council, in the original action, although it be proved by affidavit that the plaintiff, in whose favour judgment was given in the court below, died after judgment, and before the allowance of the appeal to the King in Council, though after the allowance of that to the Governor and Council. *Washburn* v. *Powell*, 2 O. S. 463.

Accounts.]—Decree directing accounts to be taken varied on appeal. Construction of decree in appeal and duty of master under it. *Gilbert* v. *Jarvis*, 20 Gr. 478.

Amount Involved.] — Although the Supreme Court cannot refuse to hear an appeal in a case where only $22 is involved, yet the bringing of appeals for such trifling amounts is objectionable, and should not be encouraged. *McDonald* v. *Gilbert*, 16 S. C. R. 700.

Amount Involved.]—It is not beneath the dignity of the court to determine an appeal where the amount involved is less than $40. *Clarke* v. *Creighton*, 14 P. R. 100.

Arbitration.]—Where an action in the division court by a school teacher against the trustees was referred by order of the Judge, with the consent of parties:—Held, that the arbitrator's decision could not be appealed from under 16 Vict. c. 185, s. 24. *Chief Superintendent of Schools, Appellant, In re Milne and Sylvester*, 18 U. C. R. 538.

Arbitration—*Stated Case.*]—On a reference at nisi prius the order required the arbitrator, at the request of either party, to state any special facts for the court, which was thereupon empowered to alter or amend the verdict as it might think proper. The arbitrator having stated a case, the court made a rule thereon:—Held, that no appeal would lie, and that as judgment had not been entered, error could not be brought. *Mills* v. *King*, 14 C. P. 223; *S. C.*, 3 E. & A. 129.

Consent Order.]—There can be no appeal from an order appearing on its face to be made by consent, unless by leave of the court or Judge making it, even though the appeal is on the ground that no consent was given: R. S. O. 1897 c. 51, s. 72. *Re Justin*, 18 P. R. 125.

Contempt—*Motion to Quash Appeal.*]—The fact that a party to an action is in contempt is no bar to his proceeding with the action in the ordinary way; the contempt is only a bar to his asking the court for an indulgence.

And where the defendants received certain moneys in disobedience to an interim injunction, which was made perpetual by the judgment at the trial, a motion by the plaintiff to quash the defendants' appeal from the judgment was refused. *Ferguson* v. *County of Elgin*, 15 P. R. 389.

Conventional Forum.]—On the trial of an action against a railway company for injuries alleged to have been caused by negligence of the servants of the company in not giving proper notice of the approach of a train at a crossing whereby plaintiff was struck by the engine and hurt, the case was withdrawn from the jury by consent of counsel for both parties and referred to the full court with power to draw inferences of fact, and on the law and facts either to assess damages to the plaintiff or enter a judgment of nonsuit:—Held, that as by the practice in the Supreme Court of New Brunswick all matters of fact must be decided by the jury, and can only be entertained by the court by consent of parties, the full court in considering the case pursuant to the agreement at the trial acted as a quasi-arbitrator and its decision was not open to review on appeal, as it would have been if the judgment had been given in the regular course of judicial procedure in the court. *Canadian Pacific R. W. Co.* v. *Fleming*, 22 S. C. R. 33.

Counsel's Duty.]—Where upon the argument of an appeal the respondent omitted to point out in what respect the replications of the plaintiff were demurrable, the court refused to wade through the mass of pleading which had been filed in the court below, to find it out for themselves; and being of opinion, in the absence of argument, that the pleading was good, affirmed the judgment of