

marked his ballot paper, in not cancelling it, and in refusing to give the plaintiff another ballot paper on his demanding one, and by his action compelling him to vote for the candidate whom he wished to oppose, he was thereby guilty of breaches of duty which entitled the plaintiff to judgment in his favour for the penalties provided for by the statute.

*C. Ritchie, Q.C., and J. Greer, for plaintiff. T. N. Higgins, for defendant.*

Rose, J.]

RE WILSON, REID & JAMIESON.

[April 17.]

*Will—Devise—Power of appointment—"By will or otherwise"—Disposition by will—Invalidity of the bequest—Validity of the execution of the power.*

A wife having a power of appointment under her husband's will in the words: "my said wife shall have full power to dispose of by will or otherwise" by her will devised all her real and personal estate to executors "in trust to convert the same into cash" and pay legacies, and as to the rest and residue to convert into cash and "divide the proceeds among friends, relatives and labourers in the Lord's work according to the judgment of my executors."

*Held* that the disposition made, clearly indicated an intention to take the property dealt with out of the instrument containing the power for all purposes and not only for the limited purpose of giving effect to the particular disposition expressed; but that the residuary bequest was void as too indefinite; and that the executors took the property in trust for the next of kin of the appointor and not beneficially.

*D. Fasken, W. Davidson, H. E. Rose, A. J. Boyd and Goldwin L. Smith, for the various parties.*

Ferguson, J.]

COPE & CRICHTON.

[April 24.]

*Counterclaim—Relief against co-defendant—Striking out—Costs—Pleading to counterclaim—Waiver.*

One of the defendants, in an action brought to recover possession of land and to set aside a conveyance of the land from him to his co-defendant, delivering with his statement of defence a counterclaim against his co-defendant, for relief upon the covenants contained in the conveyance attacked and in a prior mortgage deed, but sought no relief against the plaintiff in that regard, and did not serve a third party notice upon his co-defendant. The latter pleaded to the counterclaim, but at the trial moved to strike it out, and after an expression of opinion from the trial Judge, the counterclaiming defendant submitted to have it struck out.

*Held*, that the co-defendant was entitled as against the counterclaiming defendant to such costs as he would have been entitled to upon a successful motion to strike out the counterclaim.