

or any of them till further sums are ready for distribution. The \$5,000 should be used for the building scheme mentioned in the affidavit of Mr. Duggan, and the trustees should name the wing after the testatrix. The \$1,000 to the Sick Children's Hospital is on condition that a cot be named after her. Costs out of the estate. E. G. Graham, for the executors. D. C. Ross, for the Public Trustee.

FREEDMAN v. FRENCH—KELLY, J.—JAN. 7.

Contract—Sale of Lumber—Action for Price—Counterclaim for Breach of Contract—Dispute as to Subject of Contract—Evidence—Findings of Trial Judge.—An action for the price of lumber sold by the plaintiff to the defendant, and counterclaim by the defendant for breach of the contract, tried without a jury at Ottawa. KELLY, J., in a written judgment, said that there was a dispute between the parties, the substance of which was that the plaintiff contended that the contract was for 200,000 feet of lumber 2 inches by 6 inches and upwards and 6 feet and upwards in length; at \$20 per 1,000 feet; while the defendant insisted that what he purchased was lumber 2 inches by 4 inches and upwards, and that this was afterwards varied so as to include a quantity of ship-lap, after the plaintiff had inquired of the defendant whether he could handle it, and after the defendant had conferred with his customers and ascertained that they would purchase it. The defendant also contended that the purchase was not confined to lumber from the Energite plant at Renfrew. The parties were at variance as to many details of the transaction and as to what followed upon the contract. The learned Judge found that not only had the plaintiff failed to establish his position, but that the defendant's contention and his evidence had been substantially borne out by the evidence of other witnesses. Specific findings of fact were made by the learned Judge. In conclusion, he said that the item of \$179.20 in the plaintiff's claim was not in dispute; that the plaintiff was entitled to recover that sum and also \$730.78 for two car-lots of lumber at \$20 per thousand which he delivered, making together \$909.98; and that the defendant was entitled to \$1,890 damages. There should be judgment in the defendant's favour for the difference, viz., \$980.02, with costs of the action and the counterclaim. The \$4,000 draft mentioned in the plaintiff's claim should be delivered up to the defendant. J. J. O'Meara, for the plaintiff. G. F. Henderson, K.C., for the defendant.