

Chan. Div.]

NOTES OF CANADIAN CASES.

[Prac.]

CHANCERY DIVISION.

Ferguson, J.]

[Sept. 6.]

JAMES V. ONTARIO AND QUEBEC RY. CO.

Railways—The "taking"—Compensation.

In fixing compensation to a landowner for land expropriated by a railway, the rule is, as laid down in *Pierce on Railways*, p. 211, and in *Ontario and Quebec Ry. Co. v. Taylor*, 6 O. R. at p. 348, viz.: to ascertain the value of the land of which it forms a part before the taking, and the value of such land after the taking, and the difference will be the actual value to the owner of the part taken; and "the taking" is properly fixed as at the date of the company giving notice to the landowner of their intention of taking the lands.

It is not correct to say that the value should be taken as of a date prior to knowledge of intention to construct the railway.

Interest is properly allowed to the landowner on the amount of his compensation from the time of the taking to the time of the award.

Wells, for the railway company.

Delamere and English, for the landowner.

Osler, J.A.]

Full Court.

[Sept. 11.]

Ferguson, J.]

WILSON V. GRAHAM.

Will—Construction—Life estate.

This was an appeal from the judgment of PROUDFOOT, J., in the matter of the construction of the following will: "I do hereby bequeath to my beloved wife, E. K., all the real and personal property that I am possessed of after my funeral expenses and just debts are paid. My wish and desire is that she shall divide the said real estate or personal property, £50 to my eldest daughter S., £50 to my daughter E., the balance to my son W. Provided any more, if a daughter, £50, and if a son, then the balance, £50 to each of my daughters to be equally divided betwixt them after her decease."

The testator died October 15th, 1850, leaving him surviving one son and two daughters,

and his widow, who was then pregnant with another child, who proved to be a daughter, the present plaintiff. The son William died intestate, unmarried, and without issue.

Held, that the widow took a life estate under the will in both real and personal property, except what was necessary to pay the legacies to the daughters.

McCarthy, Q.C., and *Fitzgerald*, for the plaintiff.

Bruce, Q.C., and *Burton*, for the defendant.

PRACTICE.

Proudfoot, J.]

[May 26.]

RE PLUMB TRUSTS.

Executor's accounts—Practice.

Application to the court under R. S. O. c. 107.

One of the trustees of an estate desired to retire from the trusts, and a new trustee had been nominated in his stead under the provisions contained in the deed of settlement of the trust estate. Some of the securities taken over by the trustees under the settlement on assuming office had turned out badly, and considerable loss of capital had resulted therefrom. Consequently, the newly nominated trustee would only accept the position of trustee on the condition that the accounts of the said trust estate up to the time of the transfer of the trust estate to him, as such trustee, should be duly passed before this court by the petitioners, the trustees.

The trustees now petitioned the court to take said accounts, and also to fix the trustees' compensation.

PROUDFOOT, J., ordered a reference to the Registrar of the Chancery Division to take the accounts of the dealings of the said trustees with said trust estate, and in taking such accounts to fix and apportion the compensation proper to be paid to the said trustees respectively for their care and pains in the past management of the said estate.

F. D. and costs reserved.

D. T. Symons, for petitioners.

J. H. Ferguson, for adult respondents.

F. W. Harcourt, for infant respondent.