

Div'l Court.]

[June 12.]

QUAINTANCE v. THE CORPORATION OF THE
TOWNSHIP OF HOWARD.

Municipal corporation—Agreement subject to passing of a by-law not executed by corporation—Work done under it—Mandamus to raise the money.

Plaintiff entered into an agreement in writing with defendants to do certain work, which contained this clause: "Notwithstanding anything hereinbefore contained to the contrary this agreement . . . is made subject to the final passing . . . of the said by-law . . . and in the event of the said by-law not being passed . . . then this agreement shall be null and void"

At the trial it was proved the by-law was never finally passed and the agreement was produced to prevent the plaintiff recovering as on a *quantum meruit*.

Held, (reversing FERGUSON, J., and FERGUSON, J., dissenting), that the defendants were bound by the contract; the stipulation as to the agreement being subject to the final passing of the by-law, must receive a reasonable construction. The defendants' right to refuse to pass the by-law must be confined to the case when the plaintiff has not performed his work properly. The plaintiff, on showing that he had complied with the terms of the contract, is entitled to a mandamus to compel the defendants to raise money to pay him; but as he neglected to furnish a preliminary certificate of an engineer, a new trial was granted to enable him so to do.

Douglas, Q.C., for the appeal.

Aylesworth contra.

Div'l Ct.]

[Sept. 6.]

JOHNSTON v. DENMAN *et al.*

Will—Devise—Legacies charged on real estate.

The testator, after devising certain pecuniary legacies and a home to two of his children until they came of age, provided as follows: "And I will and bequeath unto my daughter, C.J., all my real estate and the remainder of my personal estate after the above legacies are paid."

Held (affirming ROBERTSON, J.), that the legacies were charged on the real estate.

Idington, Q.C., for the plaintiff.

Shepley for the infant defendant.

BOYD, C.]

[Sept. 11.]

ARGENTINE v. SCHRIER.

Will—Construction—Specific bequests—"Home"—Maintenance.

A testator bequeathed to his daughter "a home as long as she may remain single" in his dwelling house.

Held, that though in the case of an infant "home" would probably include maintenance, yet that the legatee in this case being of age, and there being no express words giving her maintenance after minority, she was not entitled to maintenance under the above bequest.

The testator also bequeathed to his wife "the full control of all my real and personal estate, stock and implements during her life-time," and willed that at his wife's decease "all the stock, of whatever kind, with the farming implements on the farm at my wife's decease shall be equally divided between my sons."

Held, that the bequest to the widow of the stock and farm implements was specific, and therefore exempt from the payment of the pecuniary legacies.

*Hoyle*s for the plaintiff.

Moss, Q.C., *J. Hoskin*, Q.C., *J. M. Clark*, and *W. D. McPherson* for various defendants.

Full Court.]

[Sept. 12.]

REYNOLDS v. JAMIESON.

Action for breach of promise—Nonsuit—Release by promisee.

Action of breach of promise of marriage. Plaintiff set up a promise to marry in October, 1885, and a repudiation of it by the defendant in March, 1886. The promise was duly proved, and the evidence of the plaintiff was that in March, 1886, the defendant visited her and told her: "I never asked you to marry, or came to marry you. I never was promised to you." Whereupon she got vexed at him, and ordered him out of the house; that he wanted the engagement renewed and she would not consent to it.

The trial judge nonsuited the plaintiff on the ground that this amounted to an absolute release, and that the relationship between the parties was terminated.

Held, however, that the matter was one which should have been left to the jury; that there