

REPORTS AND NOTES OF CASES.

Dominion of Canada.

SUPREME COURT.

Que.] GRIFFITH v. HARWOOD. [May 8.
Appeal—Jurisdiction—Final judgment—Plea of prescription—Judgment dismissing plea—Costs—R.S.C. c. 135, s. 24, art. 2267 C.C.

A judgment affirming dismissal of a plea of prescription when other pleas remain on the record is not a final judgment from which an appeal lies in the Supreme Court of Canada. *Hamel v. Hamel*, 26 Can. S.C.R. 17, approved and followed.

An objection to the jurisdiction of the Court should be taken at the earliest moment. If left until the case comes on for hearing and the appeal is quashed, the respondent may be allowed costs of a motion only.

Appeal quashed with costs.

Atwater, Q.C., and *Duclos*, for appellant. *Ryan*, for respondent.

Que.] BANQUE JACQUES-CARTIER v. GRATTON. [May 8.
Will—Powers of executors—Promissory note—Advancing legatee's share.

M., who was a merchant, by his will gave a special direction for the winding up of his business and the division of his estate among a number of his children as legatees and gave to his executors, among other powers, the power "to make, sign, and endorse all notes that might be required to settle and liquidate the affairs of his succession." By a subsequent clause in his will he gave his executors "all necessary rights and powers at any time to pay to any of his said children over the age of thirty years, the whole or any part of their share in his said estate for their assistance either in establishment or in case of need, the whole according to the discretion, prudence and wisdom of said executors," etc. In an action against the executors to recover the amount of promissory notes given by the executors, and discounted by them as such in order to secure a loan of money for the purpose of advancing the amount of his legacy to one of the children who was in need of funds to pay personal debts,

Held, affirming the judgment appealed from, that the two clauses of the will referred to were separate and distinct provisions which could not be construed together as giving power to the executors to raise the loan upon promissory notes for the purpose of advancing the share of one of the beneficiaries under the will. Appeal dismissed with costs.

Brousseau, for appellant. *Aime Geoffrion*, for respondent.