

53 Vict. ch. 37, sec. 27 (D.)—*See* INTOXICATING LIQUORS, 4.

53 Vict. ch. 37, sec. 1 (O.)—*See* MECHANICS' LIEN, 3.

53 Vict. ch. 50, sec. 38 (O.)—*See* SALE OF LAND, 1.

### SURROGATE GUARDIAN.

*Power to lease lands—Possession of lands by.*—*See* LIMITATIONS OF ACTIONS, 2.

### TAX SALE.

*Crown patent—Tax sale—Adverse occupation—R. S. O. c. 193, s. 191.*—*See* CROWN LANDS, 2.

### TORT.

*By married woman—Action against husband.*—*See* HUSBAND AND WIFE, 6.

### TRUSTS AND TRUSTEES.

*1. Joint character of executors and trustees—Taking securities in name of one of two joint executors and trustees, as trustee—Termination of executorship—Pledging securities for advance—Misapplication of moneys advanced—Breaches of trust—Notice to pledgees—Following securities—Burden of proof—Infant executor—Judgment against defaulting trustee.*—A sole executor or the surviving executors of a deceased person may, at any time within twenty years from the death of the testator, sell or pledge any of the estate to any purchaser or mortgagee who has no notice of a breach of trust, and the

purchaser or mortgagee is under no obligation to make inquiry as to the destination of the purchase or mortgage money or to see to its application; but with regard to trustees there is no rule which entitles a person advancing money to them to disregard the notice which is found in the mere description of trustee, that the person to whom it is applied is not absolute owner of the security which he proposes to pledge.

By a will two persons were appointed executors and trustees, one of the trusts being to invest the moneys of the estate; both proved the will, though one was at the time an infant; the other invested certain moneys of the estate in mortgages, which were made to himself alone "as trustee of the estate and effects of J. C. deceased;" and ten years after the testator's death he hypothecated these mortgages to the defendants for advances, which he misapplied:—

*Held*, that when the defendants found securities of a permanent character vested in one of the trustees named in the will, as a trustee, they were charged with notice that these were securities which he held as trustee, and not as executor, and that he was committing a breach of trust in holding, in his separate name, securities belonging to a joint trust; and therefore that the plaintiffs, representing the estate, were entitled to have the mortgages transferred to them and to make the defendants account for the moneys paid thereon:—

*Held*, also, that the defaulting trustee had no power to pledge the assets of the estate, the onus was upon the defendants to shew that the proceeds were applied for the purposes of the estate:—