

Sup. Ct.]

NOTES OF CANADIAN CASES.

[Ct. of App.

pay the whole damage. Per STRONG, HENRY, and GWYNNE, JJ., that the accident happened through no fault or negligence on the part of the *M. C. Upper*, and therefore the appeal should be allowed.

The Court being equally divided, both the appeal and cross-appeal were dismissed without costs, and the judgment of the Maritime Court stands.

Robinson, Q.C., for appellant.

McCarthy, Q.C., for respondent.

MONAGHAN v. HORN.

"THE GARLAND."

Maritime Court of Ontario, jurisdiction of—Rev. Stats. Ont. ch. 128—Lord Campbell's Act—Action in rem against vessel for damages for death of a person by personal representative.

In a suit brought before the Maritime Court of Ontario against a foreign vessel to recover damages by the mother of a child under age, killed by negligence in a collision between two vessels.

Held, (TASCHEREAU, J. dissenting), that the Maritime Court of Ontario has no jurisdiction in the case of personal injury resulting in death apart from and independently of Rev. Stats. Ont., ch. 128, (a copy of Lord Campbell's Act), and as the plaintiff in this case has not brought her action as the personal representative of the deceased child, under and by virtue of said Act, she has *no locus standi*.

Per FOURNIER and HENRY, JJ., that the Maritime Court of Ontario has jurisdiction to entertain an action *in rem* against a vessel in cases of personal injury resulting in death, when brought at the instance of the personal representative of the deceased, under the statute.

Per TASCHEREAU, J., that independently of the statute the Maritime Court of Ontario has jurisdiction.

H. F. Scott for the appellant.

McCarthy, Q.C., for the respondent.

OLIVER v. DAVIDSON.

Will—Legacy—Whether absolute or conditional.

The question which arose on this appeal was whether a legacy or bequest of \$1,600 to one Alex. Oliver, under the will of Wm. Oliver, was absolute and unconditional. In one of the

paragraphs of the will, the following words occur: "Subject to the following conditions, *viz.*, that they unite in payment, &c.," and in another paragraph: "And further that Alexander and Duncan Oliver work on the farm until their legacies became due." The date mentioned in the will for the payment of the \$1,600 bequest to Alexander, was 1st January, 1877, and prior to that date Alexander ceased to work on the farm, and went away and engaged in other pursuits.

Held, (HENRY, J., dissenting), that the construction of the paragraph in the will, bequeathing the \$1,600 to Alexander must be based on a consideration of the whole will, and that the intention was that Alexander's right to receive his legacy was conditional on his remaining on the farm and uniting in earning it.

Bethune, Q.C., for appellant.

Bruce for respondent.

COURT OF APPEAL.

JUNE 30.

CAMERON v. CAMPBELL.

Devise—Trustee—Statute of Limitations.

A testator directed a sum of money to be invested, the interest whereof was to be employed in endeavouring to discover his brother, to whom the money was to be paid if discovered within five years from the death of the testator, and if not so found the amount to be paid to M. C., as fully stated, 27 Gr. 307.

Held, [affirming the decree there pronounced], that the conduct of the executors constituted them trustees, and that the right to recover the money was not barred by the Statute of Limitations; and that C., into whose hands the money had come, was chargeable with interest from the time of its receipt by him.

Moss, Q.C., and *Watson*, for appeal.

Robinson, Q.C., and *Sidney Smith*, Q.C., contra.

PARKHURST v. ROY.

Devise to Government of foreign state—Super-vision of trusts.

A testator directed his executors to pay and deliver the residue of his estate to the Government and Legislature of the State of Vermont, to be disposed of as to them shall seem best,