

Nova Scotia.]

[May 18.

FRASER v. FRASER.

*Will—Devise to two sons—Devise over of one's share—Condition—Context—Codicil.*

A testator devised property equally to his two sons, with a provision that "in the event of the death of my said son, T. G., unmarried or without leaving issue," his interest should go to the other. By a codicil a third son was given an equal interest with his brothers in the property, on a condition which was not complied with, and the devise to him became of no effect.

*Held*, reversing the decision of the Supreme Court of Nova Scotia, that the codicil did not affect the construction to be put on the devise in the will; that the two sons named in the will took the property as tenants in common, the one having an absolute, and the other a conditional estate; and that the condition meant the death of T. G. at any time, and not merely during the lifetime of the testator.

Appeal allowed with costs.

*Mellish*, for the appellant.

*Borden*, Q.C., for the respondent.

New Brunswick.]

[May 18.

NEW BRUNSWICK RAILWAY CO. v. KELLY.

*Registry laws—Registered deed—Priority over earlier unregistered conveyance—Notice—Suit to postpone.*

In 1868 N. conveyed a parcel of land to a railway company who did not register their deed. In 1872 he made a deed in favor of K., of land which the company claimed was comprised in their conveyance, and a suit in equity was brought praying for a decree postponing the later deed, which was registered, to that of the company. To prove notice to K. of the earlier conveyance, two witnesses swore that in conversation with them K. had admitted knowledge that the company owned the land.

*Held*, affirming the decision of the Supreme Court of New Brunswick (33 N.B. Rep. 110), that it was necessary for the company to prove actual notice that would have made the conduct of K. in taking and registering her deed fraudulent; that the witnesses as to the admissions were not connected with the property, and their evidence would not prove even constructive notice; and that giving them entire credit their evidence was not sufficient.

Appeal dismissed with costs.

*Blair*, Att'y-Gen. N.B., for the appellants.

*Pugsley*, for the respondent.

Prince Edward Island]

[May 18.

OWEN v. OUTERBRIDGE.

*Ships and shipping—Chartered ship—Perishable goods—Ship disabled by excepted perils—Transshipment—Obligation to tranship—Repairs—Reasonable time—Carrier—Bailee.*

If a chartered ship be disabled by excepted perils from completing the voyage, the owner does not necessarily lose the benefit of his contract, but may forward the goods by other means to the place of destination, and earn the freight.