

S. C.

NOTES OF CASES.

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Cooley on Torts, 602 *et seq.*; *Barnes v. Hathorn*, 54 Me. 124.

We think the verdict is against law, and it must be set aside."

NOTES OF CASES.

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SUPREME COURT.

From Ontario.]

[April.

COSGRAVE V. BOYLE.

Promissory note—Death of endorser—Notice of dishonor—37-38 Vict. c. 47, Sec. 1. D.

The appellants discounted a note made by P. and endorsed by S. in the Bank of Commerce. S. died, leaving the respondent his executor, who proved the will before the note matured. The note fell due on the 8th May, 1879, and was protested for non-payment, and the Bank, being unaware of the death of S., addressed notice of protest to S. at Toronto, where the note was dated, under 37-38 Vict. c. 47, sec. 1 (D). The appellants, who knew of S.'s death before maturity of the note, subsequently took up the note from the Bank, and relying upon the notice of dishonor given by the Bank, sued the defendant.

Held, reversing the judgment of the Court of Appeal for Ontario, that the holders of the note sued upon when it matured gave a good and sufficient notice to bind the defendant, and that the notice so given enured to the benefit of the appellants.

O'Sullivan, for appellants.

McMichael, Q. C., for respondent.

SUMMERS V. COMMERCIAL UNION ASSURANCE COMPANY.

Interim receipt—Agent, power of—Broker cannot bind company.

This was an action brought on an interim receipt, signed by one D. Smith, as agent for the respondent company at London. One of the pleas was that Smith was not respondents' duly

authorized agent as alleged. The General Managers of the company for the Province of Ontario—Messrs. Westmacott and Wickens—had appointed, by a letter signed by both of them, one Williams, as general agent for the city of London. Smith, the person by whom the interim receipt in the present case was signed, was employed by Williams to solicit applications, but had no authority from or correspondence with the head office of the company. In his evidence Smith said he was authorized by Williams to sign interim receipts, and the jury found he was so authorized. He also stated that Westmacott was informed that he (Smith) issued interim receipts, and that Westmacott said he was to be considered as Williams' agent. There was no evidence that Wickens, the other head officer, knew what capacity Smith was acting in.

Held, affirming the judgment of the Court of Appeal for Ontario, that Williams had no power to delegate his functions, and that Smith had no authority to bind the respondent company.

H. Cameron, Q. C., and *Bertram* for appellant.

C. Robinson, Q. C., and *Miller* for respondents.

From New Brunswick.]

RAY, et al, v. LOCKHART, et al.

Will—Surplus—Whether residuary personal estate of testator passed.

Among other bequests the testator declared as follows: "I bequeath to the Worn-out Preachers' and Widows' Fund, in connection with the Wesleyan Conference here, the sum of £1,250; to be paid out of the moneys due me by Robert Chesnut, of Fredericton. I bequeath to the Bible Society £100. I bequeath to the Wesleyan Missionary Society, in connection with the Conference, £1,500." Then follow other and numerous bequests. The last clause of the will is, "Should there be any surplus or deficiency, a *pro rata* addition or deduction, as may be, to be made to the following bequests, namely,—The Worn-out Preachers' and Widows' Fund, Wesleyan Missionary Society, Bible Society." When the estate came to be wound up, it was found that there was a very large surplus of personal estate, after paying all annuities and bequests. This surplus was claimed