

Ct. Ap.]

NOTES OF CANADIAN CASES.

[Chan Div.]

C. C. York]

[Oct. 25.]

JOYNE V. LEE.

*Chattel mortgage—After acquired property—
Appeal—Franchise.*

A chattel mortgage conveyed to the plaintiff the stock in trade of the mortgagor as a general hardware merchant, etc., more particularly described in Schedule A.; all which goods and chattels were situate and lying on certain specified premises. Schedule A. set out the property and proceeded: "And all goods . . . which at any time may be owned by the said mortgagor and kept in the said store for sale by him as a general hardware merchant . . . and whether now in stock or hereafter to be purchased and placed in stock."

Held, affirming the judgment of the County Court of York, that the after-acquired property brought into the business in ordinary course, was covered by the plaintiff's chattel mortgage as against the executions of creditors of the mortgagor. No title to such property passed at law; the claim rested on the mortgagee's equitable title; as soon as the property was brought upon the named premises and into the named business, it was identified, and the equity attached.

The action out of which this interpleader arose was in the High Court of Justice; the interpleader issue and subsequent proceedings were transferred to the County Court of Middlesex, by an order under 44 Vict. c. 7, s. 1. A subsequent order recited that the parties had consented that the issue directed should be determined by the decision of the County Court of York on a special case agreed upon, and directed that the venue should be changed from Middlesex to York, and that the parties should proceed to the argument of the special case before the County Judge of the latter county.

Held, per PATTERSON and OSLER, JJ.A., that no appeal lay to this court from the decision of the County Court of York upon the special case, and that the appeal should be quashed.

McMichael, Q.C., for the appeal.

Clark, contra.

CHANCERY DIVISION.

Ferguson, J.]

[September 29.]

MAYS V. CARROLL ET AL.

Will—Devise—Next of kin—Period of distribution—Construction—Executor.

J. C. died, leaving a wife and a daughter, E. C. By his will, after giving all his property to his executors, to pay the whole income to his wife for life, or during widowhood, and after her death or second marriage, to pay the said income to his daughter E. C., yearly, if she had attained the age of twenty-one, for her life . . . he provided as follows: "And I hereby empower her, my said daughter, if she come into possession of the said income, and have lawful issue, to make a will bequeathing my said property absolutely to any or all of her said children, in such manner as she may think best. And if she have no children, then the said property to fall to my next of kin who may be living on this continent"; and further provided: "In case . . . then, notwithstanding anything heretofore provided, I will and direct that neither she, Ellen, nor any of her children, shall receive any portion of my property, and in such case my whole property shall be given to my wife absolutely, or if my said wife at that time be dead, then the property to go to my nearest of kin as above provided." The wife died and the daughter E. C. attained twenty-one. came into possession of the income, and died unmarried and without issue, having made a will appointing the plaintiff her executor. In an action by the plaintiff, M., as executor of the daughter E. C. against W. C. and F. McQ. as executors of the testator J. C. for the property which the defendants resisted on the ground that the next of kin of the testator other than E. C. were entitled to it, it was

Held, That the "next of kin" must be ascertained at the death of the testator J. C., and not at the death of his daughter E. C., and as E. C. was sole next of kin she had such an interest as would pass by her will, and the plaintiff as her executor was entitled to the property.

G. W. Field, for the plaintiff.

J. L. Murphy, for the defendants.