

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

accounts, and to ascertain what damages the Co. had "properly suffered" by reason of such distress. It appeared that in F.'s action I. had offered the Co.'s solicitor to procure witnesses and assist in the defence, but his offer was not accepted. In the Master's office these witnesses were examined and showed that their evidence would have materially affected the verdict, but the Master held that the verdict obtained was *conclusive evidence* of the measure of damages against I.

Held, that in a general indemnity the judgment was, at the most, only *prima facie evidence*, that the ruling of the Master was erroneous, and that the case must go back to him to revise his report.

Hudspeth, Q.C., for appeal.

Moss, Q.C., contra.

Proudfoot, J.]

[January 9.

COOK V. NOBLE.

Will—Construction—Executory devise.

J. C. by his will directed his trustees to divide his real estate equally between his sons then living, when his eldest son should attain the age of twenty-five years, when the share coming to his eldest son was to be conveyed to him, and they were to give him \$2000 *to stock the same*. In case any of his sons should die before attaining the age of twenty-five years, *without issue*, then the share of the party so dying should be divided equally among the survivors.

J. J. C., the eldest son, died under the age of twenty-five, leaving a widow and infant daughter, having made a will making no devise of real estate, but giving his wife his life insurance, then standing in favour of the C. P. L. & S. Co., and directed that so much of his \$2000 as was necessary be used to redeem the insurance from the Co. and the balance he gave to his wife.

Held, that the devise to the eldest son was a devise in fee simple subject to an executory limitation and subject to his dying *under twenty-five and without issue*, and as issue was left in this case, the infant was entitled to the land, subject to her mother's dower.

Held also, that the \$2000 was an absolute be-

quest, with a direction as to its application, and that the legatee was entitled to the money regardless of the particular mode of its application.

H. Cameron, Q.C., and *McPhillips*, for the plaintiff.

Cassels, Q.C., for the executors.

Hoskin, Q.C., for the infants defendant.

Proudfoot, J.]

[January 9.

THE CANADA ATLANTIC RAILWAY COMPANY V. THE CORPORATION OF THE CITY OF OTTAWA, ET AL.

Municipal Corporation—By-law granting Bonus to Railway—36 Vic. c. 48, O., secs. 248, sub-s. 1, secs. 271-274.

On Sept. 5th, 1873, the City Council of Ottawa passed a resolution, authorizing the by-law committee to introduce at the next regular meeting of the council a by-law for granting a bonus of \$100,000 of debentures to aid in the construction of a certain railway, now represented by the plaintiffs in this action.

A by-law was accordingly introduced on September 22nd, 1873, read a first time, considered in committee of the whole, reported with an amendment, and the clerk was directed to advertise, pursuant to the statute, 36 Vic. c. 48, O. 1, and the votes of the electors was to take place on October 16th, 1873.

On Sept. 24th, 1873, the by-law was advertised, and on Oct. 16th, 1873, it was voted on by the electors, and carried. On Oct. 20th, 1873, the returns of the election were presented to the council, and the by-law was read a second and third time and carried.

Since, however, under 36 Vic. c. 48, s. 231, sub-s. 3, the by-law could only be taken into consideration by the council after one month from the first publication in the newspaper, at a meeting of the council, on Nov. 5th, 1873, after the necessary time had elapsed, a motion to read the by-law a second and third time was proposed and lost.

The by-law was by its terms to take effect on December 13th, 1873.

On April 7th, 1874, a motion was again made and carried at a meeting of the City Council that the by-law passed by the ratepayers, hav-