

Chan. Div.]

NOTES OF CANADIAN CASES.

[Com. Pleas.]

dealt with the property as her own for some 20 years, she had acquired a good title by possession against her former ward.

RE MONTEITH.

MERCHANTS' BANK ET AL. V. MONTEITH.

Administration—Warehouse receipts—Possession of the goods—Evidence—43 Vict. c. 22, s. 7 (D).

In administration proceedings in the M. O. certain unsecured creditors of the deceased sought to make certain other creditors account for the proceeds of certain goods which they, claiming to be entitled to them under warehouse receipts, by attacking the validity of the warehouse receipts. It appeared by the evidence of H. that he had in M.'s lifetime signed warehouse receipts at the request of M. for goods warehoused in M.'s cellar, on which M. had obtained advances, although he, H., never had possession of the goods. The Master found against the evidence of H. that the warehouse receipts were valid. On an appeal from the Master, it was

Held, that H. had acted as a warehouse keeper in issuing the receipts, and not as a mere bailee, and that the test of the validity of the warehouse receipts did not necessarily depend upon proving that he was actually, visibly and continuously in the possession of the goods from first to last. The receipts were not void at their inception. M. having disappeared, H. took possession of the goods, and allowed the secured creditors to take and sell them, which they had a right to do. The report should therefore not be disturbed. Query, as to rights of execution creditors against M., if there had been any before H. took possession of the goods; credibility of witnesses and evidence in criminal proceedings commented upon.

Rule of the Court in the administration of assets as laid down in *Wilson v. Paul*, 8 Sim. 63, and *Mitchelson v. Piper*, *Id.* 64, referred to.

Per PROUDFOOT, J., 43 Vict. c. 22, s. 7 (D), authorizes persons who are not warehousemen alone to give receipts, but such warehouse receipts are comprised in the definition previously given in the statute, which requires the goods to be in the actual, visible and continued possession of the bailee.

Ferguson, J.]

[December 14, 1885.]

WICKSTEED V. MUNRO.

Insurance for benefit of child—Death of child during lifetime of insured—Right of administratrix to insurance money—R. S. O. c. 129.

A. M. M. in 1868 insured his life for the benefit of his daughter, H. M. M., under 27 Vict. c. 17. H. M. M. married the plaintiff W. in 1879, and died during her father's lifetime in 1882, leaving a daughter for whose benefit she devised all her interest in the said policy to her husband by her will, in which she recited that she had paid the premiums which had been allowed to remain unpaid and kept the policy up for several years. A. M. M., subsequently, in 1877, married the defendant, M. A. M., and died intestate in 1884, leaving her his widow and one child by his second marriage without having made any further disposition of the insurance.

In an action by W. as executor of H. M. M. against M. A. M. as administratrix of A. M. M. to try the right to the insurance money. It was

Held, that the insurance money belonged to the estate of the insured, and was payable to the defendant M. A. M. as administratrix thereof.

MacLennan, Q.C., for the plaintiff.

Miller, Q.C., for the defendant.

COMMON PLEAS DIVISION.

Divisional Court.]

[January 2.]

RYAN V. CANADA SOUTHERN RY. CO.

Railways—Accident—Contributory negligence—Withdrawing case from jury.

On the undisputed facts disclosed in the plaintiff's case it appears that there was a switch stand erected in defendants' yard close to the track, the deceased, who was brakeman in the defendants' employment, being aware of its position and proximity to the track. On the day in question the deceased was engaged as a brakeman on a train passing through the yard. His position of brakeman was on the top of the car, but for some reason which did not appear, he was on the side of the car, holding on to a ladder, and, as his