

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

they lived, and subsequently recognizing her right to it.

Held, that the piano did not form part of the wife's separate estate, as the husband could not at common law make a gift *inter vivos* of this description of property, so as to prevent its passing to his personal representatives, and that there was no evidence of an intention on his part to constitute himself a trustee of the piano for his wife.

Riddell, for plaintiff.

J. W. Kerr, for defendants.

CHANCERY DIVISION.

Div'l. Ct.]

CAMPBELL V. COLE.

[June 19.]

Married woman—Separate trader.

The plaintiff, a married woman, professed to be carrying on business separate from her husband, but the latter got his means of subsistence out of the profits of the business, took ready money as he pleased, was actively engaged in the management of the business, in buying and selling goods, conducting correspondence, keeping books, etc., and in the transaction in which the debt to the defendant was incurred appeared as principal, though husband and wife swore that he was in all things but the wife's agent. The goods in the shop having been seized under the defendant's execution and claimed by the plaintiff; the jury in an interpleader issue found for the plaintiff, but the Court set aside the verdict and directed judgment to be entered for the defendant.

Osler, Q.C., for the claimant.

Cassels, C.C., and *Stonehouse*, for the execution creditor.

Div'l. Ct.]

IN RE WINSTANLEY & CARRICK.

[June 14.]

Vendors and purchasers' Act—Will, construction of—Devise in fee simple—Partial restraint on alienation.

After devising certain land to one of his daughters, the testator proceeded: "the remaining lot . . . I bequeath to my daughter, E. R., and that she shall not dispose of the same only by will and testament, and if either of my daughters shall depart this life without leaving issue, then and in such case the survivor shall be possessed of the share of the deceased sister."

Held, on appeal from the judgment of *PROUDFOOT*, J., that E. R. took an estate in fee simple with an executory devise over, but that the restriction upon alienation, being partial, was valid.

J. H. McDonald, for vendor.

W. N. Miller, for purchaser.

Div'l. Ct.]

[June 19.]

BANK OF TORONTO V. HALL.

Execution—Partnership and separate creditors—Priority of writs.

L. having a judgment against a firm of R. & Co., which was in insolvent circumstances, issued execution and directed the sheriff to levy the amount on the separate goods of R., a member of the firm. The plaintiffs had a subsequent execution in the sheriff's hands, issued upon a judgment against R. individually, and the sheriff was directed on this writ to levy the amount on the goods of R. The sheriff sold R.'s goods and applied the proceeds first upon L.'s execution, after verbal notice from the plaintiff that they claimed the proceeds of R.'s separate property as applicable first to their writ. The plaintiffs then brought this action against the sheriff for a false return.

Held (*PROUDFOOT*, J., dissenting), reversing the judgment of *PROUDFOOT*, J., that L. had priority over the plaintiffs' writ on the separate goods of the debtor.

Per PROUDFOOT, J., the equitable principle of administering an insolvent estate between separate and partnership creditors should be applied, and priority given to the plaintiffs on the separate property of the debtor.

Robinson, Q.C., for plaintiff.

G. T. Blackstock, for defendant.

Div'l. Ct.]

[June 19.]

IN RE CORNISH.

Mechanic's Lien—Two successive contractors—Liens of creditors of first contractor—Computation of ten per cent.

A contractor having performed a certain amount of work on a building, failed to complete it, whereupon his surety entered into an agreement with the owner to complete it. Creditors of the original contractor now claimed liens for material furnished.

Held, that the ten per cent. of the contract price