

REPORTS AND NOTES OF CASES.

Dominion of Canada.

SUPREME COURT.

Yukon.]

[April 15.]

CANADIAN BANK OF COMMERCE v. BARRETTE.

*Trust—Banking—Hypothecation of securities—Terms of pledge
—Duty of bank.*

B. sold property to the Syndicat Lyonnais du Klondyke and took as security for price mortgages on real and personal property and a promissory note, and transferred such securities to the Canadian Bank of Commerce to secure his present and future indebtedness. He signed a document authorizing the bank to realize on the same in its discretion, to grant extensions and give up securities, accept compositions, grant releases and discharges, and otherwise deal with them as it might see fit, without prejudice to B.'s liability. The note not being paid at maturity the bank sued the syndicate and B. on it and on the covenants in the mortgages, and obtained judgment against both. In the same action the syndicate on counterclaim for damages for deceit had judgment against B. which was eventually set aside, but while it existed the bank made a settlement with the syndicate and discharged the latter from all liability on the judgment of the bank on payment of over \$20,000 less than the debt. B. was not a party to this settlement and the bank afterwards refused to give him any information about it or to give him a statement of his account with the bank. In an action by B. for an account and to have the bank enjoined from further dealing with the securities,

Held, that the power given to the bank to deal with the securities was to be exercised for the purpose of liquidating B.'s debt and as to the surplus, for B.'s benefit; that the settlement having been made solely for the benefit of the bank and in sacrifice of B.'s interests the bank violated its duty to B.; and that the bank had not satisfied the onus upon it of shewing that had the whole