

## SUPREME COURT OF CANADA.

OTTAWA, 25 March, 1897.

New Brunswick]

JONES v. MCKEAN.

*Trustee—Account of trust funds—Abandonment by cestui que trust  
—Evidence.*

The holder of two insurance policies, one in the Providence Washington Insurance Company, and the other in the Delaware Mutual, on which actions were pending, assigned the same to M. as security for advances, and authorized him to proceed with the said actions and collect the monies paid by the insurance companies therein. By a subsequent assignment, J. became entitled to the balance of said insurance money after M.'s claim was paid. The actions resulted in the policy of the Providence Washington being paid in full to the solicitor of M., and, for a defect in the other policy, the plaintiff in the action thereon was nonsuited.

In 1886 M. wrote to J., informing him that a suit in equity had been instituted against the Delaware Mutual Insurance Company and its agent, for reformation of the policy and payment of the sum insured, and requesting him to give security for costs in said suit, pursuant to a judge's order therefor. J. replied that as he had not been consulted in the matter, and considered the success of the suit problematical, he would not give security, and forbade M. employing the trust funds in its prosecution. M. wrote again, saying, "As I understand it, as far as you are concerned you are satisfied to abide by the judgment in the suit at law, and decline any responsibility and abandon any interest in the equity proceedings," to which J. made no reply. The solicitor of M. provided the security and proceeded with the suit, which was eventually compromised by the Company paying somewhat less than half the amount of the policy.

Before the above letters were written J. had brought suit against M. for an account of the funds received under the assignment, and in 1887, more than a year after they were written, a decree was made in said suit referring it to a referee to take an account of trust funds received by M., or which might have been received with reasonable diligence, and of all claims and charges thereon prior to the assignment to J., and the acceptance thereof.