

## NOTES OF CASES.

## SUPREME COURT OF CANADA.

OTTAWA, April, 1881.

COSGRAVE V. BOYLE.

*Promissory Note—Death of Endorser—Notice of dishonor.*

The appellants discounted a note, made by P. and endorsed by S., in the Canadian Bank of Commerce. S. died, leaving the respondent his executor, who proved the will before the note matured. The note fell due on the 8th May, 1879, and was protested for non-payment; and the Bank, being unaware of the death of S., addressed a notice of protest to S. at Toronto, where the note was dated, (under 37 Vict. c. 47, s. 11, D). The appellants, who knew of S.'s death before maturity of the note, subsequently took up the note from the Bank and sued the defendant, relying upon the notice of dishonor given by the Bank, and without having given any other notice.

*Held*, reversing the judgment of the Court of Appeal for Ontario, that the holders of the note sued upon, when it matured, had given a good and sufficient notice to bind the defendant, and that the notice so given enured to the benefit of the appellants.

*O'Sullivan* for appellants.

*McMichael, Q. C.*, for respondent.

## SUMMERS V. THE COMMERCIAL UNION ASSURANCE CO.

*Interim Receipt—Agent, powers of—Broker cannot bind the Company.*

This was an action brought on an interim receipt, signed by one D. Smith, as agent for the respondent company at London, Ontario. One of the pleas was that Smith was not respondent's duly authorized agent, as alleged. The general managers of the Company for the Province of Ontario had appointed, by a letter, signed by them both, one Williams, as general agent for the city of London. Smith, the person by whom the interim receipt in the present case was signed, was employed by Williams to solicit applications, but had no authority from or correspondence with the head office of the company.

In his evidence, Smith said he was authorized by Williams to sign interim receipts, and the jury found he was so authorized. He also

stated that one of the general managers was informed that he (Smith) issued interim receipts, and that the former said he was to be considered as Williams' agent. There was no evidence that the other general manager knew what capacity Smith was acting in.

*Held*, affirming the judgment of the Court of Appeal for Ontario; that Williams had no authority to bind the respondent company.

*H. Cameron, Q. C.* (with him *Bartram*), for appellant.

*Robinson, Q. C.*, (with him *W. N. Miller*), for respondents.

## RAY et al. v. LOCKHART et al.

*Will, Construction of—Surplus—Residuary personal estate.*

Among other bequests the testator declared as follows:—"I bequeath to the Worn-out Preachers' and Widows' Fund in connection with the Wesleyan Conference here, the sum of \$1,250, to be paid out of the moneys due me by Robert Chestnut, of Fredericton. I bequeath to the Bible Society £100. I bequeath to the Wesleyan Missionary Society in connection with the Conference, the sum of \$1,500." Then follow other and numerous bequests. The last clause of the will is:—"Should there be any surplus or deficiency, a *pro rata* addition or deduction, as may be, to be made to the following bequests, namely, the Worn-out Preachers' and Widows' Fund, Wesleyan Missionary Society, Bible Society." When the estate came to be wound up, it was found that there was a very large surplus of personal estate, after paying all annuities and bequests. This surplus was claimed, on the one hand under the will by the above-named charitable institutions, and on the other hand by the heirs-at-law and next of kin of the testator, as being residuary estate, undisposed of under his will.

*Held*, affirming the judgment of the Supreme Court of New Brunswick, that the "surplus" had reference to the testator's personal estate, out of which the annuities and legacies were payable; and, therefore, a *pro rata* addition should be made to the three above-named bequests, Statutes of mortmain not being in force in New Brunswick.

*Carker, Q. C.*, (with him *Sturdee*), for appellants.

*Kaye, Q. C.*, (with him *Stockton*), for respondents.