

Ct. Ap.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

week." He drew upon the fund and died, without rendering any account, on the 4th of September following.

Held, that the bank was not affected with notice of the money so deposited, being trust moneys, so as to render the bank liable for J.'s misappropriation thereof.

After the deposit of the plaintiff's money, J. recovered a sum of \$1,182.95 for the defendant S. as her solicitor, which he also deposited in the same account on the 24th of August, 1881. Up to the time of J.'s death the amount at his credit always exceeded the amount deposited by him for S.

Held, that all the moneys so deposited by J. were impressed with a trust and might be followed; but (in this reversing the judgment of the Court below), as between the plaintiff and S., that S. had a first charge upon the sum at the credit of J. for the full amount of her deposit, and that the balance was applicable to the discharge of the plaintiff's demand.

The bank claimed the right to charge against the account, in priority to the claim of the plaintiff and S., checks and notes of J. presented on maturing after notice to the bank of J.'s death.

Held, that they could not do so, and in consequence of having made such claim, both in this Court and the Court below they were refused their costs.

McEWAN v. McLEOD.

Consent reference—C. L. P. Act, sec. 205—Damages.

The judgment of the Court below, 46 U. C. R. 235, affirmed—Cameron, J., dissenting as to the quantum of damages.

J. K. Kerr, Q. C., for appeal.

Bethune, Q. C., contra.

PETERKIN v. McFARLANE.

Notice—Mortgage, etc.

The Court being equally divided, the appeal and the judgment of the Court below, 17 C. L. J. 244, affirmed with costs.

Moss, Q. C., and Scane, for appeal.

Atkinson and W. Cassels, contra.

RE MURRAY, PURDHAM v. MURRAY.

Gift inter vivos—Trustee.

The widow of a testator claimed as a gift from her husband a promissory note payable to his order, but not endorsed by him. The evidence, in the Master's office, on taking the accounts of the estate, shewed that the wife had had possession of this and other notes belonging to her husband during his lifetime. The Master at London found that under the circumstances appearing in the report of the case, 29 Gr. 443, that the testator had intended the note to belong to the widow, and did not form part of the assets of the estate, which finding was reversed by the court.

Held [reversing the order then pronounced], that the evidence established a valid gift *inter vivos*.

Per BURTON and PATTERSON, J.J.A. The testator under the circumstances had constituted himself a trustee of his wife of the note.

Moss, Q.C., for appellant.

W. Cassels, contra.

CHANCERY DIVISION.

Proudfoot J.]

[Nov. 9, 1883.]

RE WINSTANLEY v. CARRICK.

Will—Construction—Estate tail—Restraint on alienation—Vendor and Purchaser Act.

A testator devised as follows:—

"The freehold property I hold at present in Jarvis street, in this city, to be divided in two lots from Jarvis street, the lot with the house to be given to M. L., to hold for her benefit during her natural life, and to dispose of the same by will and testament only, the remaining lot, thirty-five feet wide, in Jarvis street, running through to Mutual street, 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 said 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, that "dying without failure of issue," meant an indefinite failure of issue, and E. R. took an estate tail, and the condition against disposing of the property except by will and