pay debts, &c. Shortly afterwards, at a meeting of S. G.'s creditors, of whom the respondents were the chief, a resolution was adopted authorizing H. S. to sell and licitate the properties belonging to S. G., with the advice of an advocate and the cashier of the respondents, two of the creditors, and promising to ratify anything done on their advice, and they resolved that the moneys derived from the sale or licitation of the properties should be deposited with the respondents, to be apportioned amongst S. G.'s creditors, *pro rata*. G. continued to collect the fruits and revenues and rents and acted generally for H. S. under the advice aforesaid, and deposited both the moneys derived from the estate of S. G. and those derived from the estate of M. A. Bosna, the first wife, with the respondents, under an account headed "succession, S. Giraldi." The Bank subsequently paid out some of these monies on H. S.'s cheque. At her death there remained to the credit of the account "succession, S. Giraldi," a sum of $9,635.59, for which this action was brought by the heirs and representatives of Dame M. A. Bosna.

Held, (*per* STRONG, TASCHEREAU and GWYNNE, JJ. RITCHIE, C. J. and FOURNIER and HENRY, JJ., contra) that as between the heirs Bosna and the Bank there was no relation of creditor and debtor, nor any fiduciary relation, nor any privity whatever; and as the moneys collected by G., belonging to the heirs Bosna, were so collected by him, as the agent of H. S., and not as that of the Bank; and, as the representatives of H. S. were not parties thereto, the appellants could not recover the moneys sued for.

Beigue and *Trenholme*, for the appellants.

Globensky, Q.C., for the respondents.

HARRINGTON v. CORSE.

Will, construction of—C. C. art. 889—Direction of testator to pay debts—Legatee of hypothecated property.

On 30th April, 1869, H. S. being indebted to J. P. in $3,000, granted an hypothec on certain real estate. On 28th June, 1870, H. S. made his will, which contained, amongst others, the following clause:—"That all my just debts, funeral and testamentary expenses, be paid by my executors, etc." By another clause he left to W. H., the appellant, in usufruct, and to his children in property, the real estate which he had hypothecated.

Held, reversing the judgment of the Court of Queen's Bench (STRONG, J., dissenting): 1. That the direction to pay debts included the debt of $3,000 secured by the hypothec.

2. That under art. 889 of the Civil Code a particular legatee is not liable without recourse against the heir or universal legatee for a debt of the testator's secured by hypothec on the immoveable property bequeathed to him.

Doutre, Q.C., for the appellant.

Strachan Bethune, Q.C., and *Robertson*, for the respondants.

QUEEN'S BENCH DIVISION.

IN BANCO.

JACKSON v. CASSIDY.

Promissory note—Attachment.

A negotiable promissory note not yet due, cannot be attached under Rule 270 O. J. A.

REGINA v. MALCOLM ET AL.

Trespass—Fair and reasonable supposition—C. S. U. C. cap. 105, 25 Vict. cap. 22, 33 Vict. ch. 27, sect. 2—Conviction—Certiorari.

The defendants were convicted of a trespass under C. S. U. C. cap. 105, as amended by 25 Vict. cap. 22. They appealed to the Sessions, which affirmed the conviction. The conviction was then brought into this Court, and a motion was made to quash it on the ground of want of jurisdiction in the convicting justice, inasmuch as it appeared by the evidence, and by affidavits filed, that the defendants acted under a fair and reasonable supposition that they had the right to do the acts complained of within the meaning of the above statutes.

Held, that that was a fact to be adjudicated upon by the convicting justice upon the evidence, and therefore that a *certiorari* would not lie for want of jurisdiction.

W. H. P. Clement, for the motion.

Aylesworth, contra.

TROTTER v. CHAMBERS.

Married woman—Separate property.

The plaintiff and her husband were married before 1859. In 1870 he, being free from debt, purchased land and had it conveyed to his wife, the plaintiff, who, with the rents and profits there-