tween the dividend sheet and the deed of composition had not been sufficiently established. The plaintiff, signing the dividend sheet, did so only as a means of getting a portion of what was due him. Judgment for plaintiff.

*J. P. Fisher*, for the plaintiff.

*R. J. Wicksteed*, for defendants.

## NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

### CHANCERY DIVISION.

Proudfoot, J.] [Sep. 5.

WELLS V. NORTHERN RAILWAY CO.

*Railways—User—Subway—Consolidated Railway Act*, 1879, *s.* 27.

The plaintiff was the owner of certain lands, a right of way over which had in 1854 been sold by J. G., the then owner, to the defendants' railway. The defendants built their railroad along this right of way in 1858, and where the road crosses a depression in the ground a trestle bridge was built and a subway left under. From 1862 to the few months before this action was brought, the plaintiff and those under whom he claimed enjoyed the undisputed use of this subway. The defendants were now filling it in, in order to make a solid track across the depression, and refused to give any compensation for it to the plaintiffs, and the plaintiff asked for damages for the obstruction of the subway, and to have it reopened. The defendants pleaded not guilty, and referred to the Consolidated Railway Act, 1879, sec. 27.

*Held*, that the evidence in this case showed such an enjoyment as of right of the subway, and such an open and continuous user thereof, that the plaintiff was entitled to assume that there was a reservation of it in the deed of conveyance from J. G. to the railway, or was entitled to claim the easement under the Prescription Act. He could not prevent the filling up of the trestle work but was entitled to damages for his property in the easement, which damages should, if the parties could not agree, be ascertained under the Railway Act.

*Ritchie*, Q C., and *R. Boultbee*, for the plaintiff.

*S. H. Blake*, Q.C., for the defendants.

Boyd, C.] [Sep. 13.

RE HALL.

*Advancement—Intestacy—Hotchpot—R. S. O. ch.* 105, *s.* 41, 43.

J. H. died intestate, and among his assets were found a promissory note for $500, made by his son in his favour. This son of J. H. predeceased him and died intestate, leaving a child who claimed to share under the Statute of Distributions in the estate of J. H. with the children of J. H. The question was whether he was bound to bring the $500 into hotchpot so as to equalize the shares coming to him and the children of J. H.

*Held*, that the writing required by R. S. O. ch. 105, secs. 41, 43, to evidence an advancement under those two sections may be either an expression by the intestate that the donation is by way of advancement, or an acknowledgment to the same effect by the child; but in this case the only writing was the note, and that imported that the original dealing was one of loan or debt between the parties, and as such did not satisfy the Statute, and the grandchild of J. H. was not required to bring the amount of that note into hotchpot.

The difference between the law of England and that of Ontario as to advancement commented upon.

*J. R. Roaf*, for the administrator of J. H.

*J. Hoskin*, Q. C., for the infants.