

Vac. C.]

NOTES OF CASES.

[Chan.

HALL v. LAMIN.

Insolvency—Dissolution of partnership—Subsequent insolvency of continuing partner—Proof of claim of retiring partner—Equitable debt.

Under articles of partnership made between W. and McC. the stock and other partnership property were, on the dissolution thereof, to be divided between the parties in proportion to the amount of capital respectively contributed by them, as appearing by the last stock-taking, less the amount afterwards withdrawn. The partnership was subsequently dissolved, and it was agreed that all the partnership assets should become vested in W., who should collect the debts and pay the liabilities of the firm, and an account should be taken to ascertain the amount payable by either to the other, and in pursuance of such agreement W. conveyed to McC. all his interest in the assets, and was discharged from all the liabilities of the firm. W. had an account taken by an accountant, under which he claimed that a balance was due him, but this was not done in McC.'s presence, and was not admitted by him to be correct, and in fact there was no settlement between the partners. McC. continued to carry on the business on his own behalf, and while so doing became insolvent, and entered into a composition with his creditors, one-half of such composition being secured by a bond given by the defendant to the plaintiff, the assignee in insolvency. The plaintiff claimed that W. was entitled to rank upon the estate for the balance alleged to be due him, and brought an action on the bond for the amount of the composition thereby secured as regards W.'s claim.

Held, by *Oster*, J. that the plaintiff was entitled to recover; that W.'s claim was an equitable debt capable of being ascertained by the Court, and was therefore one for which W. was entitled to rank upon the estate.

Watson, for plaintiff.

J. K. Kerr, Q.C., for the defendant.

CHANCERY.

Proudfoot, V. C.] [May 28.

COURCIER v. COURCIER.

Infant—Joint tenant—Ouster—Rents, and profits.

The general rule in equity that an infant is entitled to treat a person who takes possession of his estate as his bailiff or agent applied in a case where the party in possession was a tenant in common with the infant, although there had never been any ouster or exclusion of the infant, or any denial of his title.

Proudfoot, V. C.] [May 28.

LUCAN v. HAMILTON.

Trust deed—Power of appointment.

T. C. K., by a deed of 7th April, 1870, conveyed lands to two trustees to and for the sole and absolute use of his wife, C. E. K., for and during the term of her natural life, to and for her own separate use and benefit, or to the use of such person or persons and for such estates and interests as she, notwithstanding her coverture, should by any deed or writing under her hand and seal, or by her last will, appoint. By a deed made two years afterwards, T. C. K. conveyed other lands to the same trustees, upon the same trusts as were set forth in the former deed. One of the trustees having died, and the other having removed from this Province, C. E. K., professing to be acting in pursuance of the power contained in the first-mentioned deed, by a deed made in 1877, appointed the plaintiffs trustees of the lands mentioned in the second deed, to hold upon the trusts of the deed of 1870. By a deed poll made in July, 1878, C. E. K., after reciting these several conveyances appointed the premises by the deed secondly above conveyed to the plaintiffs, upon trust to permit C. E. K. to use, &c., the said lands for life, or until she should require the trustees to sell, and after her death, without such requisition to sell, to permit T. C. K. to use and enjoy the same premises for his life, and, on his request, to sell, &c., and upon the death of T. C. K. and C. E. K. upon trust for their children in such proportions