

*Held*, that the matter must be remitted to the magistrate (who had dismissed the information) with instructions to convict.

*B. B. Osler*, Q.C., and *E. T. Malone*, for the prosecutor.

*G. F. Shepley*, Q.C., and *M. H. Ludwig*, for the defendant.

BOYD, C.  
FERGUSON, J. }

[June 24.]

LEITCH *v.* MOLSONS BANK.

*Executors and administrators—Distribution pari passu—Action by administratrix to recover excess.*

D. C. Leitch being guarantor of the indebtedness of his brother, A. J. Leitch, to the defendants, who were pressing the latter for payment, agreed to buy the latter's stock in trade, giving a number of notes of \$100 each, which were to be deposited, and were deposited with the defendants, and as paid the proceeds applied towards the liquidation of the indebtedness of the bank. D. C. Leitch afterwards sold the stock and died, and part of the purchase money on the latter sale being paid to the plaintiff, his administratrix was employed to retire some of his notes to A. J. Leitch, the proceeds being applied to reduce the indebtedness to the bank.

The plaintiff had before this given the usual notice for creditors and the time for putting in claims had expired. She afterwards became aware of two claims against the estate, including a large one by A. J. Leitch, and now sued the defendants to recover the money she had paid as above, or the excess over the defendants' proper pro rata share.

*Held*, confirming the decision of MACMAHON, J., that the action must be dismissed.

Per BOYD, C. : The widow having duly advertised for creditors under the statute, was justified in making payments as on a solvent estate. The estate was discharged, although the creditors coming in after the statutory period may have the right to follow the payment to the defendants if so advised.

*J. A. Robinson*, for the plaintiff.

*J. S. Robertson*, for the defendant.

BOYD, C.]

[May 4.]

VAN TASSELL *v.* FREDERICK.

*Will—Construction—Devise—Estate—Defeasible fee—"Die without issue"—Share.*

A testator, dying in 1833, by his will, made in the previous year, gave to his two sons, after a life estate to his wife, certain lands, habendum to the said F. and J., "as tenants in common, their heirs and assigns forever, subject, however, to this proviso, that if either of my aforesaid sons should die without legitimate issue, his share, as aforesaid, shall revert to and become vested in the other son united with him in the aforesaid devise." One son died unmarried in 1843. The other son married and had children, and in 1847 sold the whole property, and conveyed it as in fee simple to the purchaser, who failed to observe the provisions of the Act as to entails, by registering his conveyance within six months.