"desired by telegraphing you to sign deed "for me, and I feel confident that you will "see that I am protected and not lose one "cent by you. After you get matters adjusted "I would like you to send me a cheque for "$800." Four years after, A. wrote to L. a letter in which he said: "In one year more "I will try again for myself and hope to pay "you in full." The account sued upon was stated some eighteen months after this last letter.

Held, reversing the judgment of the Court below, Taschereau and Patterson, JJ., dissenting, that L. was not estopped from denying that he executed the deed of assignment; and as it was evident that he did not expect to participate in the benefit of the deed, but looked to the debtor A for payment, he could recover on the account stated.

Held, per Patterson, J., that although A. had no sufficient authority to sign the deed for L., yet there was an agreement to compound the debt dehors the deed which was binding on L., and the understanding that L. was to be paid in full would be a fraud upon the other creditors of A.

Appeal allowed with costs.

Eaton, Q. C., for the appellant.

Newcombe for the respondent.

OTTAWA, June 13, 1890.

Nova Scotia.]

CLARK v. CLARK.

Will—Construction of—Devise to two persons—Joint tenants or tenants in common—Severance.

The will of R. C. devised his real estate to his two sons, their heirs, executors and assigns, and ordered that said sons should jointly and in equal shares pay the testator's debts and the legacies granted by the will. There were six legacies given to two other sons of the testator of $50 each, payable by the devisees in two, three, four, five, six and seven years respectively. The estate vested in the devisees before the passing of the act abolishing joint tenancies in Nova Scotia.

Held, reversing the decision of the Court below (21 N.S. Rep. 378), Taschereau and Gwynne, JJ., dissenting, that the provisions for payment of debts and legacies indicated an intention on the part of the testator to effect a severance of the devise, and the devisees took as tenants in common and not as joint tenants. *Fisher* v. *Anderson* (4 Can. S. C. R. 406) followed.

On the trial of a suit between persons claiming through the respective devisees to partition the real estate so devised, evidence of a conversation between the original devisees as to the manner in which they regarded their tenure of the estate was tendered and rejected.

Held, Gwynne, J., dissenting, that such evidence was properly rejected.

Held, per Gwynne, J., that the evidence could not have had the effect of assisting to explain the will, which was the ground upon which it was rejected at the trial, but it should have been received as evidence of a severance between the devisees themselves holding as joint tenants under the will.

Appeal allowed with costs.

Harrington, Q. C., for the appellants.

Borden for the respondents.

OTTAWA, June 13, 1890.

New Brunswick.]

PROVIDENCE WASHINGTON INSURANCE CO. v. GEROW.

Marine Insurance—Construction of Policy—Port on west coast of South America—Guano Islands—Commercial usage.

A vessel was insured for a voyage from Melbourne to Valparaiso for orders, thence *to a loading port on the western coast of South America*, thence to United Kingdom. She went to Valparaiso and from there proceeded to Lobos, an island from twenty-five to forty miles off the west coast of South America, where she loaded guano and sailed for England. Having met with heavy weather she returned to Valparaiso and a survey was held by which it appeared that to repair her would cost more than she would be worth afterwards. The owner claimed payment on the policy for a constructive total loss, which was resisted on the ground of deviation in the vessel loading at a port off the coast. On the trial of an action on the policy evidence was given by