

Chan. Cham.]

RE JACK, JACK V. JACK—NOTES OF CASES.

[Q.B.]

[November 5.—PROUDFOOT, V.C.]

This was a motion for an administration order on behalf of an administratrix, it being alleged that the personal property of the deceased was insufficient to satisfy the intestate's debts.

H. M. Howell, for the administratrix, submitted, that the decisions in *Sweetnam v. Sweetnam*, 9 C. L. J. 161, 10 Ib. 135, and *Re Ette*, 6 Prac. R. 159, were opposed to *Re Shipman*, ante, and that the latter case should not be followed. The case of *Doner v. Ross*, 19 Gr. 229, shows that the law was not altered by the A. J. Act, so as to affect the liability of an administratrix as stated in the reasoning given in the judgment in *Re Shipman*.

Hoskin, Q.C., for infants, relied on *Re Shipman*.

PROUDFOOT, V.C., thought that he could not review the decision of V. C. Blake, in the case cited; the only course was for the applicant to appeal if dissatisfied. The case was, however, allowed to stand over by consent in order that the application might be renewed on behalf of a creditor.

NOTES OF CASES.

IN THE ONTARIO COURTS, PUBLISHED
IN ADVANCE, BY ORDER OF THE
LAW SOCIETY.

QUEEN'S BENCH.

IN BANCO, June 30.

BOLEY v. McLEAN.

Consol. Stat. U. C. cap 93, secs. 6-8—Survey under.

A surveyor employed by the Government, under *Consol. Stat. U. C. cap. 93, secs. 6-8*, to survey a concession line alleged to have been run in the original survey, or to have been obliterated, instead of attempting to make a survey in accordance with those sections, satisfied himself that the original line could be found, and endeavoured to retrace it.

Held, following *Tanner v. Bissell*, 21 U. C. R. 553, that such survey was not binding under the statute; and the Court, on the evidence given at the trial, affirming the finding of the learned Judge, who tried the case without a jury, that the line so run was not in fact the same as the original line.

Semle, that in order to prove a survey which will be conclusive under the statute, the application by the County Council to the Government for such survey must be shewn.

Douglas, for plaintiff.

Robinson, Q.C., for defendant.

THOMSON v. FEELEY.

Agreement by secretary of proposed company—Personal liability—Equitable defence—Pleading.

The plaintiff sued defendant on an alleged agreement, that in consideration, that the plaintiff would make a promissory note, payable to the defendant's order, for \$500, and delivered it to defendant to be negotiated, defendant promised that the plaintiff should, at any time before the maturity of the note, have the option of subscribing for one share of \$500 in a company to be incorporated under "The Ontario Joint Stock Letters Patent Act, 1874," and called the Aldershott Match Company; and that, if the plaintiff should before such maturity decline to take said share, the said company would take up the note and indemnify the plaintiff against it. The declaration averred that the plaintiff delivered the note to defendant, who negotiated it, that before its maturity the plaintiff declined to take the share, and so notified defendant, but that neither the defendant nor the company took up the note, and the plaintiff had to pay it.

Defendant pleaded, on equitable grounds, that he was one of the projectors and secretary of said company, and as such before the issue of the Letters Patent applied to the plaintiff to take a share, which the plaintiff agreed to do on the terms of the following receipt then given by him to defendant:

"Hamilton, 13th April, 1876.

"Mr. Thomson has given me his note for \$500 for one share in the Aldershott Match Company, which he has the privilege of declining at the expiry of the note; and, if so, this company will take up the note.

"C. FEELEY, Secretary."

That defendant then gave his note accordingly: that afterwards the company was incorporated: that the defendant was a shareholder and the secretary, and in that capacity only endorsed the note to the company, which accepted it on the terms of the receipt and discounted it: that before its maturity the plaintiff notified the company that he declined to take the share, but afterwards withdrew such notice and paid the note at maturity, and was treated as a shareholder, and voted and acted as such at meetings of shareholders: that it was not the intention of either plaintiff or defendant that defendant should be personally bound by the receipt, or in respect of said note or share, but they both intended that the plaintiff should look only to