Judgment of the Chancery Division, 23 O.R. 355, affirmed, BURTON, J.A., dissenting.

Cassels, Q.C., and *Leitch*, Q.C., for the appellants.

Moss, Q.C., for the respondent.

From FERGUSON, J.] [May 8.

IN RE STAEBLER, STAEBLER *v.* ZIMMERMAN.

Will—Legacies—Charity—Marshalling—Abatement—Executors and administrators—Evidence—Corroboration—R.S.O., c. 61, s. 10.

Though there can be no marshalling in favour of charities, yet, where charitable and other legacies are payable out of a mixed fund, the proceeds of realty, impure personalty, and personalty, the charitable legacies do not fail *in toto*, but must abate in the proportion which the sum of the realty and impure personalty charged with charitable gifts bears to the pure personalty.

The evidence of executors that promissory notes belonging to the testator had, when they came into their hands, endorsements upon them showing that payments had been made to the testator does not require corroboration under s. 10 of R.S.O., c. 61.

Judgment of FERGUSON, J., reversed.

Robinson, Q.C., and *A. Monro Grier* for the appellants.

J. P. Mabee and *R. T. Harding* for the respondents.

From GALT, C.J.] [May 8.

SUTHERLAND *v.* WEBSTER.

Covenant—Assignment—Damages.

A covenant by an incoming partner to indemnify and save harmless a retiring partner against the liabilities, contracts, and agreements of the firm cannot, after breach of an agreement to sell goods, but before action or ascertainment of the damages, be assigned to the damnified purchaser so as to enable him to recover the damages by direct action against the covenantor.

Judgment of GALT, C.J., affirmed.

Moss, Q.C., for the appellants.

W. M. Douglas for the respondents.

From ARMOUR, C.J.] [May 8.

BANK OF HAMILTON *v.* SHEPHERD ET AL.
BAILEY ET AL. *v.* BANK OF HAMILTON.

Banks and banking—Security—Contemporaneous advance—Bills of exchange and promissory notes—Renewal—Substitution of securities—Assignments and preferences—Confession of judgment—Cognovit actionem—53 Vict., c. 31, ss. 74, 75 (D.)—R.S.O., c. 51, s. 113—R.S.O., c. 124, s. 1.

A renewal of a note is not a negotiation of it within the meaning of s. 75 of the Bank Act, 53 Vict., c. 31 (D.), so as to support a security taken at the time of the renewal in substitution for the previously existing security.