

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

to restrain the Council from further proceeding with the same. It was

Held, that P. was entitled to succeed, and the injunction was granted with costs.

H. D. Gamble, for plaintiff.

Foster and McWilliams, for the defendants.

Boyd, C.]

] May 26.

EXCHANGE BANK V. COUNSELL ET AL.

Winding up proceeding—Payment to creditors—
45 Vict. c. 23, s. 75.

The bank suspended payment September 15, 1883. Winding up proceedings were commenced November 23, and an order made December 5. The defendants, C. and S., being depositors in the bank, drew a cheque for \$4,000 on November 1 on their deposit account, which was given to D., a debtor of the bank on notes maturing the following December and January. D. gave mortgage security for the cheque on October 31. The arrangement was all made about October 5, although the security was not given until the 31st, and the cheque was not presented to the bank until November 23, when it was accepted as payment of the maturing notes.

In an action by the liquidators of the bank against the defendants, to which D. was not a party, to recover the amount thus paid on the cheques as having been paid after the winding up proceedings were commenced. It was

Held, that the defendants could not be proceeded against to make them account for the \$4,000 upon a statement of claim alleging that there was an illegal payment of that sum upon their cheque in the circumstances above stated. Upon the facts there was no payment by the bank to the defendants.

C., who was being sued by the bank, obtained defendants' cheque for \$2,118, giving security therefor on November 21, and retired the notes in suit on November 23.

Held, that the defendants could not be ordered to repay the amount of the cheque as being a wrongful payment under 45 Vict. c. 23, s. 75.

MacLennan, Q.C., and *Bain*, Q.C., for the plaintiffs.

E. Martin, Q.C., for the defendants.

Boyd, C.]

[June 10.]

WILLIAMS V. ROY.

Remuneration to executors.

A testator willed as follows: "I hereby authorize and direct my said executors to retain for their own use and benefit the sum of \$200 each in lieu of all charges, for their services in performing the duties hereby imposed on them as executors of this my will."

An action having been instituted for construction of the will and administration, the executors, who had retained the said sum of \$200, claimed the further sum of \$580 as compensation for their services.

It was admitted by all parties that it would be proper for the executors to retain the said further sum if not prevented by the express clause in the will.

Held, that the executors could not have more than the sum fixed by the testator.

In 1874 the Legislature, by the 37 Vict. c. 9, laid down the principle that the Court is not to fix the allowance to trustees when the testator has himself provided what it shall be. This is a most reasonable rule, not requiring a parliamentary declaration as to its propriety.

Lash, Q.C., for the Girls' Home.

Hoyles, for the executors.

H. Murray, for the Orphans' Home.

Lefroy, for the Boys' Home.

Boyd, C.]

[June 11.]

BARCLAY V. ZAVITZ.

Will—Devise of mortgage—Maintenance of wife—Principal and interest.

G. H. Z. in his will provided as follows: "With respect to a certain mortgage . . . my will is as follows,—I give and bequeath out of the proceeds of said mortgage to each of my daughters (naming them) the sum of \$200, to be paid them respectively when the youngest of my said children reaches the age of twenty-one years, and if any of my said children shall not have been married before that time the child or children being then unmarried shall not receive their shares until such times as she or they shall marry.

Provided that my executors may pay such part or parts of said legacies . . . if they