

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

CHANCERY DIVISION.

Boyd, C.]

[March 5.]

MASON V. MASON.

Devolution of Estates Act, 1886, secs. 4, 7—
Locke King's Act—R. S. O. c. 106, s. 36.

The *Devolution of Estates Act*, 49 Vict. c. 22, is to be read in conjunction with R. S. O. c. 106, s. 36, and the words used in the 4th and 7th sections relating "to the payment of debts," applied to the payment of such debts as are charged on land, and by the terms of the R. S. O. c. 106, s. 36, are payable thereout as the primary fund.

A devise of one lot to a specific devisee, while the rest of the testator's land passes under a general devise to the executors in trust for the heirs-at-law, affords no indication of intention that the specific devisee is to enjoy free of the mortgage debt; nor is such an indication to be gathered from the fact that the testator directs his debts to be paid out of a mixed fund.

Miller, Q.C., for plaintiffs.

Donovan, for the widow.

MacLennan, Q.C., for D. Mason.

Moss, Q.C., and *W. Davidson*, for the other infants.

Boyd, C.]

[April 6.]

RE GABOURIE.

CASEY V. GABOURIE.

Will - Executor - Investment - Breach of trust.

G. lent money to W. on his promissory note, and when he died held such note as a security. By his will he directed his executors to get in the moneys outstanding, and invest the same in such stocks as they might deem advisable. C., the executor, who proved the will, left the loan outstanding on the note, and at a subsequent time renewed it, and took a new note made by the firm of W. Bros., of which W. was a member. The reason this was done was, as G. stated, because he could get $7\frac{1}{2}$ per cent. interest for the estate, which was more than he could do if he invested it in stocks. W. Bros. afterwards became insolvent, and the amount of the note was lost to the estate. It

was shown that the executor was advised not to invest in stocks. In taking the accounts in the Master's office it was held that the amount of the note should not be charged against him personally, but on appeal it was

Held, that it was a very obvious case of breach of trust which could not be excused, whatever may be the hardship resulting to the executor. Interest was allowed to him, however, at the increased rate from the date at which he was charged with the note, and it was directed that interest should not be charged against him at 6 per cent., if it was proved that he could not have invested in stocks to realize that rate.

Sherry, and *Stephen O'Brien*, for adult appellants.

F. W. Harcourt, for infant appellants.

T. Langton, for the executor.

Boyd, C.]

[April 9.]

RE MORICE AND RISBRIDGER.

Vendor and Purchaser—R. S. O. c. 109—*Provision in deed*—*Lawful issue.*

A deed made by C. G. (mother) to I. H. G. (daughter) just after her marriage, contained the following provision: It being hereby declared and agreed that it is intended by this deed to vest in the said I. H. G. life interest and estate in the said land, and at her decease the same is to go to the lawful issue of the said I. H. G., and to be held by them, their heirs and assigns in equal shares, and was executed by both grantor and grantee, but no issue were in existence at the date of the deed. In an application under the *Vendor and Purchaser Act*, R. S. O. c. 109, it was

Held, that the children of I. H. G. were interested in the grant, and that I. H. G. could not make a good title without all the children joining in the conveyance.

MacLennan, Q.C., for the vendor.

D. M. McIntyre, for the purchaser.