citor being allowed profit costs. Upon this, however, the obvious question arises, is not the mortgaged property in a sense a trust fund? In other words, is the relationship between mortgagor and mortgagee that of trustee and *cestui que trust*, or simply debtor and creditor? In this state of the law it will be advisable, whenever a mortgagee is a solicitor, to insert an express provision in the mortgage deed enabling him to make the usual professional charges. But he must be careful to call his client's pointed attention to such provision, and to explain to him the law on the subject, and the effect of the clause; and it has been suggested that such a provision should not be inserted unless the client has independent advice. A form of such a clause will be found at 3 Bythewood & Jarman by Robbins, 4th edit., p. 1,001. It is scarcely necessary to say that a solicitor-trustee may be and usually is expressly authorised by the instrument creating the trust to make the usual professional charges, including charges which are not strictly professional, but which could have been done by the trustee personally, and a neat short form for that purpose will be found in Messrs. Wolstenholme & Turner's Conveyancing Acts, 4th edit., p. 249. But a doubt has been expressed from the Bench whether a clause extending to non-professional charges ought to be inserted without express instructions (see *Re Chapple; Newton* v. *Chapman*, 51 L. T. Rep. N. S. 748; 27 Ch. Div. 587).—*Law Times.*

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

COMMON PLEAS DIVISION.

DIVISIONAL COURT.

COATES v. COATES.

The judgment in this case, affirmed with costs.

Aylesworth, for the plaintiff.

R. S. Cassels, for the defendants.

PALMER v. MILLER.

Principal and agent—Estoppel—Evidence.

Action to recover commission on sales made by plaintiff while in defendants' employment, the cash, therefor, however, being received after plaintiff left defendants' service.

The defendants, type founders in Edinburgh, employed plaintiff's father as their agent in Canada, to be paid by a commission "on the receipts, i.e., on the cash, bills and value of old metal received." He also had a small guaranteed salary. It was understood that as soon as the father got too old to manage the business the plaintiff was to succeed him; and in 1880 this was effected. In 1882 the plaintiff was dismissed from the defendants' employment. He wrote complaining of his dismissal, but said that the sting was taken out of it by the defendants having allowed his father $1,250 a year, for which the plaintiff said he was grateful. The plaintiff made no claim then against the defendants, because, as he stated in his evidence, that had he made any, the allowance to the father would have been stopped, and in order to induce the defendants to pay it, and in consequence of such silence and want of action on plaintiff's part, the allowance was paid up to the father's death in 1884. After the father's death the plaintiff for the first time pressed his claim.

Held, that he was not entitled to recover.