

REPORTS AND NOTES OF CASES.

Dominion of Canada.

SUPREME COURT.

N.S.]

HART v. McMULLEN.

[April 2.

Easement—Sale of land—Severance of possession—Right of purchaser to easements.

The owner of two adjacent properties conveyed them to different parties. One of the purchasers erected a dam on his land in the use of which he caused the water collected to flow back on the other property which was on a higher level. In an action claiming damages for this injury, there was evidence that the former owner had also had a dam on the land but it had been abandoned years before, and was not in use at the time of the conveyance.

Held, affirming the judgment of the Supreme Court of Nova Scotia, 32 N.S.R. 340, that where two properties of one owner are sold at the same time, and each of the purchasers has notice of the sale to the other, any continuing easement passes with the sale, but the same must have been substantially enjoyed by the vendor at the time of the sale. Therefore, as the right to use the dam in this case did not exist when the conveyance was made it could not be claimed by the purchaser. Appeal dismissed with costs.

Borden, Q.C., and Harris, Q.C., for appellant. Drysdale, Q.C., and Layton, for respondent.

N.S.]

WALKER v. FOSTER.

[April 2.

Donatio mortis causa—Evidence of delivery—Delivery to third person.

W., wishing to dispose of his property after death without making a will, placed certain promissory notes in envelopes addressed to each of his children and kept them for some years in a desk in his bedroom. When on his deathbed, he delivered the keys of the desk to one D., instructing him to deliver after his death the envelopes to his children as addressed. The contents of the respective envelopes were shown to D. and then the envelopes were sealed up in his presence. They were delivered by D. as directed. In an action by the administrators of deceased's estate to recover from one of the children damages for the conversion or detention of the property so delivered to him,

Held, reversing the judgment of the Supreme Court of Nova Scotia, 32 N.S.R. 156, that D. was not the agent of the donor in the matter, but received the property for the benefit of the donee; that it was not material