

Chan Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

was to be given in case either parent lived for, say fifteen years afterwards. On the other hand, if W. H. and A. H. died in a short time the defendant would have the farm for small value. The conclusion seemed irresistible that the defendant was willing to take his chances in this transaction, thereby gaining a good farm at small cost if death soon lightened his financial burden, and at any rate gaining it on reasonable terms (as the evidence of its value showed) even if the lives of his parents were prolonged. Such seemed the general scope and intent of the instrument, and as such it must be construed, and the son therefore could not succeed in his present contention that he was not in any event to pay more than \$4,000.

D. Armour, for the plaintiff.

C. Moss, Q.C., for R. Hill.

Boyd, C.]

[May 26.]

EXCHANGE BANK V. STINSON.

Winding up proceedings—Payment of cheques on deposit accounts after suspension of bank—45 Vict. c. 23.

The bank suspended payment September 15th, 1883. Winding up proceedings were commenced November 23rd, and an order made December 5th. R. and G. H. purchased a stock of hardware held by the bank, on which they owed \$14,000 at the time of the suspension. The bank wishing to close the account sold the balance of the stock to A. H. & Co. for \$5,700, and agreed to accept in payment cheques of the defendant drawn on his deposit account, and which were drawn on and accepted by the bank on October 31st. For these cheques A. H. & Co. gave their acceptances, which were duly paid. Before the stock was delivered R. and G. H. settled the balance of their debt.

In an action by the liquidators of the bank against the defendant to recover back the amount thus paid on the defendant's cheques under 45 Vict. c. 23, it was

Held, that the plaintiff could not recover.

The defendant also owed A. H. & Co. a debt, and gave his cheque on the bank for \$92 in part payment thereof, which the bank accepted

from A. H. & Co. on October 23rd in retiring an overdue bill.

Held, that that amount could not be recovered back. On November 19th defendant sold his cheque for \$320 to his uncle C., who was the local head of the bank, which cheque was negotiated and accepted by the bank on November 23rd (after winding up proceedings had commenced).

Held, that although it probably was an invalid transaction, as far as the person who received the money was concerned, there was no payment to the defendant of anything within the scope and meaning of the 75th sec. of the Act.

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

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

Boyd, C.]

[May 26.]

PELLS V. BOSWELL ET AL.

Corporation by-law passed in private interest—Injunction.

Corporations are trustees of their powers for the general public, and when they prostitute them for the benefit of an individual at the cost of another, the general public not being interested, their action will be restrained by the Courts.

P. was the owner of a small piece of land at the south side of Johnson's lane, which had been reserved when the lane was laid out. Johnson's lane extended half way between Adelaide and King Streets, in the city of Toronto, and M. and T. were the owners of the property extending from Johnson's lane to King Street, and were desirous of obtaining access to Adelaide Street through the lane and over P.'s reserved part, and tried to purchase it but failed.

A by-law to open up Johnson Street, initiated by the petition of M., T. and others, reciting that "they were desirous of securing communication between King and Adelaide Streets for vehicles, by means of the above street and certain lanes to the south thereof," but only providing for the opening up to M. and T.'s properties was passed by the City Council and about to be sealed, when P. brought his action