

The Legal News.

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SUPREME COURT OF CANADA.

OTTAWA, June 13, 1890.

Nova Scotia.]

DUGGAN v. DUGGAN.

Will—Legacy under—Contingent interest—Protection against waste.

The will of J. D. contained a bequest to any child or children of a deceased brother of the testator who should be living at the death of the testator's wife. P. D. was the only son of such deceased brother, and during the life time of the widow he brought suit to have his legacy protected against dissipation of the estate.

Held, reversing the judgment of the Court below, that P. D. had more than a possibility or expectation of a future interest; that he had an existing contingent interest in the estate, and was entitled to have the property preserved, so that his legacy could be paid in the event of the interest becoming vested.

Appeal allowed with costs.

E. L. Newcombe, for the appellant.
Borden, for the respondent.

OTTAWA, June 13, 1890.

Nova Scotia.]

POWER v. MEAGHER.

Trustees—Commission to—Rule of law.

Prior to the passing of the Nova Scotia Statute 51 Vic. c. 11, sec. 69, there was no statutory authority for trustees to receive commission for their services when none was provided for by the instrument creating the trust. In a case which did not come within the statute,

Held, reversing the judgment of the Supreme Court of Nova Scotia (21 N. S. Rep. 184), that the English rule of law prohibiting such commission was applicable to, and in force in, that province.

Appeal allowed with costs.

Hon. L. G. Power, appellant, in person.
Henry, Q. C., for the respondent.

DECISIONS AT QUEBEC.*

Vente—Garantie de dettes, troubles, etc.—Radiation d'hypothèque—Vente libre et quitte d'hypothèques—Arts. 1535 et 1065, C. C.

Jugé :—L'acquéreur d'un immeuble, tant qu'il n'est pas troublé de fait, n'a pas d'action contre le vendeur, son garant "contre tous troubles, dons, douaires, dettes et tous autres empêchements généralement quelconques," pour le contraindre à faire radier une hypothèque inscrite avant la vente au bureau d'enregistrement contre l'immeuble vendu (Art. 1535, C. C.) Il en serait autrement si le vendeur avait vendu *quitte et libre* de toute hypothèque. (Art. 1065, C. C.)—*Beaudette v. Cormier*, en révision, Casault, Routhier, Andrews, J.J., 28 fév. 1890.

Copyright—Infringement—Measure of damages.

Held :—Where there is clear proof of the counterfeiting of a copyright, the damages will not be measured merely by the price realized through the sale of the counterfeit, but vindictive damages will be allowed.—*Bernard & Bertoni*, in appeal, Dorion, C. J., Tessier, Baby, Church, Bossé, J.J., Oct. 5, 1889.

Contrat de vente—Réserve de bois—Droit de superficie—Enregistrement et renouvellement.

Jugé :—La réserve, par le vendeur d'une terre, de tout le bois qui se trouve sur une partie de cette terre, et du droit de l'enlever quand bon lui semblera, et de couper et enlever sur une autre partie telle quantité de pieux et de perches qu'il voudra prendre pour son utilité, et ce, tant qu'il y en aura sur ce terrain, constitue un droit de superficie qui est un *jus in re* et non un *jus ad rem*, et n'a pas besoin, pour être conservé, d'être renouvelé au bureau d'enregistrement, dans les deux ans qui suivent la mise en force du cadastre.—*Cadrain v. Theberge*, en révision, Casault, Routhier, Andrews, J.J., 28 fév. 1890.

Procédure—Matières sommaires—Articles 5977 et 5869, S. R. Q.

Jugé :—10. Les réclamations pour ouvrages et matériaux et pour argent déboursé

* 16 Q. L. R.