

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

out of the moneys arising from such sale to pay off a certain encumbrance existing on the property, and divide the balance among the four children.

*Held*, that the above words did not confer upon R. G. a power to mortgage the property, but that he having, as a matter of fact, mortgaged a portion of the said residuary estate, and applied the proceeds of the loan for the benefit of the estate, the mortgagee was entitled to claim against the estate, but he could only rank after certain encumbrances placed by specific devisees upon the property specifically devised to them.

*Clute*, for the executors of Patrick Turley, mortgagee.

*Neville*, for R. Gordon, the executor.

*J. Hoskin, Q.C., E. D. Armour, and Kapf ele*, for other of the parties.

Boyd, C.]

[May 13.]

WALLIS V. SCHOOL TRUSTEES OF LOBO.

*New school section—Selection of school site—Change of same—Necessary requisites under 48 Vict. c. 49, s. 64—Costs.*

A new rural school section being formed, it became necessary for the three trustees to provide a school site, etc. A public meeting of the ratepayers was called pursuant to 48 Vict. c. 49, s. 64, which nearly all the ratepayers attended, when the T. L. site was chosen by a majority vote of both the ratepayers and trustees as against the J. C. site.

A complaint against this result was lodged with the School Inspector under s. 32 of the statute, which led to his making attempts to have an amicable adjustment of the difficulty, the outcome of which was that two of the trustees gave notice of a subsequent meeting for the purpose of changing and selecting a school site, at which meeting a unanimous vote was had in favour of a third site called the C. site.

In an action by the other trustee and some ratepayers to have it declared that the last meeting was illegal, and to restrain building on the C. site, in which it appeared in evidence that fifty out of the sixty-seven ratepayers approved of the latter site, it was

*Held*, that the necessary precaution, under sec. 64 of the statute, of taking the opinion of the ratepayers was complied with, and the selection made was the T. L. site; that no change of a school site should be made without the consent of the majority of ratepayers present at a special meeting called for that purpose, and that under the circumstances of this case the school site had been ascertained and fixed by the first meeting, but it was competent for the second meeting to change this site with the consent of the necessary majority. The whole tendency of recent amendment of the Education Acts has been to give the rural school sections greater powers of self-regulation and self-government, and the Courts should not be astute to interfere, unless there has been a plain violation of the statute or a manifest usurpation of jurisdiction, or a reckless disregard of individual rights.

The action was therefore dismissed, but without costs, as it was a new point, and the statute was not plainly expressed.

*Heilmuth*, for the plaintiffs.

*T. Meredith*, for the defendants.

Galt, J.]

[May 16.]

CAREY V. GOSS.

*Trade mark—Infringement—Injunction—Registration of trade mark—Registration of assignment—Trade Mark and Design Act of 1879—42 Vict. c. 22, s. 4 & 14 (D.).*

The L. F. P. Co. published a newspaper called *The Commercial Traveller and Mercantile Journal*, which would be known as *The Commercial Traveller*, as those words were printed in much larger letters than the words "and Mercantile Journal," and registered it under the Trade Mark and Design Act, 1879, as *The Commercial Traveller's Journal*. The company sold the paper and good-will to the plaintiff, and on the negotiations for the sale the plaintiff saw the defendant, who was then employed by the company as manager and editor, and who showed him the assets of the paper, the printing contracts, etc., and recommended the purchase as a good investment.

After the sale, the defendant who had retained a mail list of the subscribers to the