

[Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div]

share alike, and in case of the decease of one of the said families of children as aforesaid, then I will and ordain that the said proceeds . . . be equally divided between the two remaining families, the children of each family receiving share and share alike of such half to each family." At the time of the making of the will M. K. was dead, leaving three children who survived the testatrix. S. A. W. survived E. O. W., and died in 1886, many years after the death of the testatrix. All three of the said children of M. K. predeceased S. A. W., two of them intestate and without issue, and one leaving two children who survived S. A. W. E. O. W. had three children, one of whom died childless before the testatrix, and the other two survived M. A. W. S. A. W. had several children, one of whom died during her lifetime leaving children, and the others all survived her.

*Held*, that the period of distribution was the time of the death of M. A. W., and that the children of E. O. W. and M. A. W. then living were entitled to the whole of the property, one moiety to each family, the members of each family sharing equally their moiety.

*Geo. M. Evans*, for the plaintiff.

*Walhem, Q.C.*, for the children.

*Delamere*, for the grandchildren.

Boyd, C.]

[Nov. 30.]

WYLD ET AL. V. CLARKSON.

*Guarantee—Creditors' right to rank on two estates in hands of assignees—Valuing security—48 Vict. c. 26 (O.).*

The plaintiffs supplied B. with goods on the guarantee of M. M. made an assignment for the benefit of creditors under 48 Vict. c. 26 (O.), on March 20, 1886. B. assigned in like manner on March 30, 1886. On April 6 the plaintiffs proved their claim for the full amount on M.'s estate, and stated that they held as security their claim against B.'s estate, but did not value it. On April 8 B. effected a compromise with creditors at fifty cents on the dollar, and gave composition notes therefor. The defendant, M.'s assignee, claimed that the plaintiffs should value their security, and refused to pay their dividend until they

did. Upon a special case being stated for the opinion of the court, it was

*Held* that by B.'s assignment her estate was placed in *custodia legis*, protected from judgments and executions, and available for the creditors who were thus potentially seized of their proper proportion of the assets. The original personal claim was thus transmuted into a claim *in rem*, and so could fairly be regarded as in the nature of a security which the plaintiffs were bound to value.

*Geo. Kerr, Jr.*, for the plaintiffs.

*Fry, Q.C.*, for the defendant.

Boyd, C.]

[Nov. 30.]

MUTTLEBURY V. STEVENS.

*Mortgage—Foreclosure—Rate of interest for time given for redemption.*

M. took proceedings to foreclose a mortgage made by S. on which the principal money had become due by default being made in the payment of interest, although the time for which the mortgage was made had not arrived.

*Held*, that the rate of interest for the six months allowed to S. to redeem should be computed at the same rate as the mortgage provided for, which, in this case, seemed a reasonable rate.

*F. E. Hodgins*, for the plaintiff.

Divisional Court.]

[Dec. 6.]

THOMPSON ET AL. V. GORE ET AL.

*Marriage settlement—Fraud on creditors.*

The judgment of O'CONNOR, J., affirmed.

*Lount, Q.C.*, and *Marsh*, for defendant, Jane Gore.

*Falconbridge, Q.C.*, for defendants, Brydon and James Gore.

*G. T. Blackstock*, and *T. P. Galt*, for plaintiffs.