

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.

[June 13.]

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.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

BOYD, C.]

June 4.

WESTERN ASSURANCE CO. v. ONTARIO COAL COMPANY.

Maritime law—General average contribution—Attempt to rescue vessel and cargo—Common danger—Average bond—Adjustment—Expenditure—Liability of owners of cargo.

A vessel loaded with coal stranded under stress of weather, and was abandoned as a total loss to the underwriters, the plaintiffs. The owners of the cargo, the defendants, proposed to unload at their own expense, but the plaintiffs refused to allow this and told the defendants that they could not get the cargo without signing an average bond. Upon this the defendants signed a bond which was *ex facie* imperfect, and the plaintiffs took steps to save vessel

and cargo by one expedition. They failed to rescue the vessel, but saved the larger part of the cargo. They now claimed upon adjustment contribution from the defendants for the expenditure incurred, which was in excess of the value of the salvage.

Held, that the vessel and her cargo were not when stranded in a common danger, and the expenditure was not for the preservation and safety of both ship and cargo, but for the deliverance of the vessel alone; that the average bond signed did not bind the defendants to pay more than they were rightfully liable to pay, and the adjustment was no obstacle to the determination of the real liability, and that the defendants were liable only to pay what they would have paid to recover the cargo by their own exertions.

Osler, Q.C., for plaintiffs.

Delamere, Q.C., and *T. Urquhart* for defendants.

BOYD, C.]

[June 4.]

CUMMING v. LANDED BANKING & LOAN CO.
Trusts and trustees—Breaches of trust—Taking securities in name of one of two joint trustees—Pledging securities for advance—Misapplication of moneys advanced—Following securities in hands of pledgee.

W., one of two joint trustees, assumed to lend trust moneys on the security of mortgages on land, taking the mortgages to himself alone as trustee of the estate and effects of J. C., deceased. These mortgages were hypothecated by W. to the defendants, and moneys were advanced to him by the defendants, ostensibly to meet an unexpected call by one of the beneficiaries; but the moneys were not so applied, nor otherwise for the benefit of the estate, and they were not required for any such purposes under the terms of the will creating the trust.

In an action by the other trustee and two new trustees, who were also beneficiaries, appointed in the stead of W:

Held, that W. had been guilty of two breaches of trust, and that the plaintiffs were entitled to follow the trust-securities and to make the defendants account for all moneys received by them thereunder.

Marsh, Q.C., for the plaintiffs.

S. H. Blake, Q.C., and *Mackelcan, Q.C.*, for the defendants.