

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

Proudfoot, J.]

[November 21.]

CLARKE V. THE UNION FIRE INSURANCE COMPANY.

Claim of the Agricultural Insurance Company—Administration of Insurance Company's deposit—Receiver's schedule—Subsequent claims—R. S. O. c. 160, secs. 21-22.

This was a petition arising in connection with the administration of the deposits of the defendant's company in the hands of the Provincial Treasurer, under R. S. O. c. 160, secs. 21-22. The writ in the action in the administration was issued on November 29th, 1881, and an interim receiver appointed, who was continued in that capacity by judgment given on January 7th, 1882. The receiver prepared schedules in 1881, on which all policy holders were ranked. Afterwards, by agreement of January 21st, 1882, with the assent of all the policy holders, a re-insurance was effected with the Agricultural Insurance Company of the whole of the Union Company's risks other than one year risks. In consideration of such re-insurance the Agricultural Insurance Company took the note of the Union Company at three months from January 21st, 1882. This note was not paid, and the Agricultural Company now petitioned to be placed on the dividend sheet of the Union Company for the amount of the dividend already accrued, and for all future dividends.

Held, that they were entitled to the relief prayed, notwithstanding that in one sense their claim might be said to have arisen after the date of the receiver's schedule. But properly viewed the subject of their claim existed before the schedule though in a different shape. For, by the arrangement with them, made with the assent of persons entitled to rebate, the liability of the Union Company in respect to rebates was greatly reduced, and to that extent they should be taken to be subrogated to the position of the policy holders of the Union Company.

Proudfoot, J.]

[January 9.]

DORLAND V. JONES.

Land held in trust for religious body—Devolution thereof—Jurisdiction—R. S. O. 216, s. 10.

This was an action brought by the trustees of the Westlake Monthly Meeting of Friends suing on behalf of all the members thereof; claiming a

declaration that they were entitled to certain lands in trust for the said monthly meeting, under a deed of 1821, whereby the said lands were granted in trust for the said meeting and their successors, and an injunction to restrain the defendants from interfering with them.

The defendants contended that the plaintiffs represented a faction which had seceded from the Westlake Monthly Meeting of Friends, and were not the Westlake Monthly Meeting of Friends, though they called themselves so; but that they themselves were the true and only Westlake Monthly Meeting of Friends, and the same body as the Westlake Monthly Meeting of Friends, as it existed at the time of the execution of the deed of 1821, inasmuch as they and not the plaintiffs were the members of the meeting who maintained the ancient and accepted doctrines and usages of the church called the Society of Friends.

Under an order for particulars the defendants specified the particulars of the doctrines, and articles of religious belief, usages, ordinances, and practices alleged to have been preached or taught by the plaintiffs, which are repugnant to those immemorially believed and observed by the Society of Friends.

Held, that, though it was no part of the duty of this or any civil Court to determine which of the conflicting views were true, yet, property being concerned, it was necessary to ascertain who were entitled to it, and for that purpose, but for that purpose only, to inquire into their religious opinions, according to the rule laid down by Lord Eldon in *Craigdallie v. Aikman*, 1 Dowl. 1.

It is not correct to say that in a case of a trust such as this, a majority could determine the devolution of the property. To determine the devolution of property, there must be some certain rule to go by, and assuming it possible that it might become the property of a body at variance in many particulars from the original, associated in the profession of new principles evolved by the inner light, it must be requisite that the whole body should change. So long as anyone remained attached to the original faith and order, that one is the beneficiary.

Held, upon the evidence, that the defendants' monthly meeting continued to be the same body in doctrine, order, and discipline as the Westlake Monthly Meeting was at the time the trust was created, and were entitled to a declaration that