

Chan. Div.]

NOTES OF CASES.

[Cham.

CHANCERY DIVISION.

Boyd, C.]

[March 3.

CROWTHER v. CAWTHRA.

Distributions, Statute of—Intestacy—Collaterals.

The proviso of the Statute of Distributions that, "there be no representatives admitted amongst collaterals after brothers' and sisters' children," exclude the children of a deceased nephew of the testator.

Moss, Q. C. and J. Hoskin, Q. C., for infant defendants.

Robinson, Q. C., for H. Cawthra.

S. H. Blake, Q. C., for Mr. Mulock and Mrs. Cawthra.

McArthur, for plaintiffs.

Proudfoot, J.]

[March 8.

CHAMBERLEIN v. CLARK.

Administration—Deficiency of assets—Status of creditors—R. S. O. cap. 107. sec. 30—Secured creditors.

The R. S. O. cap. 107, sec. 30, which enacts that on the administration of the estate of a deceased person, in case of a deficiency of assets, all debts shall be paid, *pari passu*, not only abolishes privilege among creditors, but places them in the same position with respect to each other as in which legatees stand towards each other; and a creditor receiving payment in full either in an action against the executor, or by the voluntary act of the latter, must refund the excess above his proportionate share at the instance of other creditors. A secured creditor need not bring his security into hotch pot, as a condition precedent to ranking on the estate, his lien being expressly preserved by the Act.

H. Cassels, for the creditor moving.

Moss, Q. C., G. H. Watson, and G. Pearson, for creditors paid in full.

Proudfoot, J.]

[March 8.

WILKES v. WILKES.

Will, Construction of—Legacy reducible by testator's debts—Payment of debts.

A testator bequeathed to his sister, M. J., "such sum as will together with what shall be at her credit in my books at Montreal, make \$6,000." At the date of the will there was \$3,258.42 at M.

J.'s credit, but subsequently the testator disposed of his business, and in carrying out the terms of the sale \$2,000 was placed at M. J.'s credit in the books, making her credit \$5,258.42. Of this sum \$3,000 was to be placed on a special account at interest, and \$2,000 to be repaid to her by the purchasers in ten years. Her account was then debited with merchandise \$5,000; the sum of \$258.42 was paid to M. J., and her account was balanced. M. J. then accepted the purchasers' undertaking to pay the \$5,000 pursuant to the terms of the purchase, and the books showed nothing due her by the testator at the time of his death.

Held, that the intention of the testator was that M. J.'s legacy should be reduced by the amount of his debt to her at the time of his death, that what had taken place amounted to payment of the debt, and that she was therefore entitled to the legacy of \$6,000.

Moss, Q. C., for the executors.

Robinson, Q. C., for the legatee

CHAMBERS.

Boyd, C.]

[March 1.

NATIONAL INVESTMENT CO. v. EGLESON.

Security for costs—Payment out.

The plaintiff paid \$400 into Court under an order for security for costs, instead of giving the usual bond. He succeeded in the suit. The defendant took the case to the Court of Appeal.

This was a motion, pending the appeal, to have the money in Court paid out to the plaintiff.

BOYD, C., refused the application without costs.

Mr. Dalton, Proudfoot, J.]

[March 8, 13.

RE KIRKPATRICK, KIRKPATRICK v. STEVENSON

Reference, Change of.

An application to change the reference in this suit from Goderich to Toronto on the ground that the Master at Goderich was unfitted by ill-health to prosecute it efficiently was granted. Costs to be costs in the cause.

Plumb, for the motion.

Hoyle, Langton and Cassels, for defendants.

Affirmed on appeal.