

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.

M. S. subsequently appointed the lands to her own use, and made a sale of part of them. On the statement of a special case for the opinion of the Court, it was

*Held*, that the will of W. K. S. was not an execution of the power, but a valid delegation of it to his wife; that an appointment can only be properly made in her favour by a deed with power of revocation, or in favour of another by will, and that a purchaser from her under an execution of the power by deed would not be compelled to accept the title under the power because of its revocable character.

*McMahon*, Q.C., and *Moss*, Q.C., for plaintiffs,  
*E. Martin*, Q.C., and *Kittson*, for defendants.

Boyd, C.]

[March 17.

## LATTA V. LOWRY.

*Will—Construction—Vesting liable to be divested to let in new members of a class—Special case on proper construction of a will.*

*Held*, that the rule laid down in *Hawkins on Wills*, at page 72, appears to be substantiated by the authorities, and is in these words:—"If real or personal estate be given to A. for life, and after his decease to the children of B., all the children in existence at the testator's death take vested interests, subject to be partially divested in favour of children subsequently coming into existence during the life of A.;" and the death of any child before the period of distribution does not affect the right of that child's representatives to claim the share of the one deceased.

*Paradis v. Campbell*, 6 O. R. 632, distinguished.

*Moss*, Q.C., *W. Cassels*, Q.C., and *J. Hoskin*, Q.C., for various persons interested.

Boyd, C.]

[March 17.

## RE KINGSTON AND PEMBROKE RAILWAY COMPANY AND MORPHY.

*Railways—Expropriation of lands—Order for immediate possession—Practice.*

Immediate possession of land, alleged to be necessary for the purposes of a railway, should not be granted to the railway on summary process under the Railway Act unless two points are very clearly established:—First, that the company has an indisputable right to acquire the land by compulsory proceedings; and, second, that there is some urgent and substantial need for immediate action, and inasmuch as these points could not be said to have been clearly established by the affidavits and arguments in this present case, the Court declined to interfere summarily, and dismissed the application of the railway company for a warrant to enter forthwith upon the lands.

*A. J. Cattanach*, for the applicants.  
*S. H. Blake*, Q.C., contra.

## MACDONELL V. McDONALD.

*Foreclosure suit—Computation of interest—More than six years' arrears—Action on covenant—Amendment.*

On an appeal from a report of a Master who had allowed more than six years of arrears of interest in taking a mortgage account.

*Held*, that in a foreclosure suit interest, when due for more than six years, will be allowed in taking the mortgage account instead of allowing it for six years only, and compelling the plaintiff to bring another action on the covenant to recover the balance.

*Howeren v. Bradburn*, 22 Gr. 96, commented on. *Allan v. McTavish*, 2 A. R. 278, followed. *Nelson*, for the appeal.

*Holman*, contra.