wood v. *South Yorkshire Ry. Co.*, 3 H. and N. 798, and *Totten* v. *Douglas*, 18 Gr. 346, followed.

Ferguson, J.] [Sept. 23.

SWAINSON v. BENTLEY.

Will—Gift of maintenance—Qualifying clause.

A testator devised certain lands to his two sons, declaring that the legacies thereinafter mentioned should be a charge thereon; he then bequeathed certain pecuniary legacies to his daughters, adding, "I give and devise also unto" [his said daughters] "their support and maintenance so long as they, or either of them, remain at home with" [his two sons,] and he gave his personal property to his two sons in equal shares.

Held, the support and maintenance of the plaintiffs was, by the will, made a charge upon the lands; and they might, for sufficient reasons, cease to live at home, and yet still be entitled to such support and maintenance.

S. H. Blake, Q.C., for the plaintiffs.

G. M. Rae, for the defendants.

Ferguson, J.] [Oct. 3.

MOORE v. MELLISH.

Will—Charge on land—Purchase from executor—Unlimited trust.

In this case the testator, after directing that his funeral charges and his debts should be paid by his executor, disposed of the residue of his real and personal estate as follows:—First, he gave and bequeated certain legacies "to be paid out of my estate," and then he gave the residue and remainder of his estate, real and personal, to his son W. absolutely, and he nominated W. sole executor.

Held, (i.) the legacies were, by the will, charged upon the estate real and personal, and failing personal estate, became a charge upon the land.

(ii.) W. had power to sell the land, and a purchaser from him was not bound to see to the application of the purchase money, for otherwise the purchaser would be required to see to the performance of an unlimited trust, viz., the payment of the debts, and this the authorities show will not be required in such case.

Moscrip, for the plaintiff.

E. Martin, Q.C., for the defendant.

Boyd, C.] [Oct. 11.

SWAISLAND v. DAVIDSON.

Promissory notes—Restricted negotiability—Mutilation—Innocent holder.

The defendant, on purchasing certain patent rights, gave the vendor, one C., two promissory notes for the purchase money, which notes, however, he stipulated should not be disposed of during their currency. The notes were, on their face, payable to C. or bearer, but to carry out the above stipulation the words "the within notes not to be sold," were endorsed upon both notes, contemporaneously with their making; and the evidence showed that the face and back of both the notes must be read together as forming the contract between the parties. Moreover, it appeared that when the notes were brought to the plaintiff the word "not" had been erased in one of them, so that the endorsement read, "This within note to be sold;" and in the case of the other note, the words endorsed,' being at the end of the paper, were torn off, but without destroying any part of the face of the note.

Held, (i.) whether the memorandum qualifying the effect of the notes was under-written or endorsed was immaterial, so long as it was a part of the original contract; and the materiality of the endorsement, in this case, appeared sufficiently from the circumstances, and had the effect of providing against a disposing of the notes to a holder for value, so as to preserve to the maker all defences and equities as against the first holder, or volunteers under him, and thus qualified the negotiability of the notes.

(ii.) The erasure and excision were each material alterations of the notes, destroying their value as securities, and discharging the defendant from liability thereupon; and inasmuch as the notes were issued in a perfect state, with no blanks, it could not be maintained that the defendant was negligent in allowing the endorsement to be put at the end of the paper where it could be so easily torn off, and that, therefore, he, the defendant, should suffer instead of the plaintiff, for the doctrine of negligence should not be applied to cases of perfect instruments like the present.

(iii.) Considering the plaintiff's occupation, and the circumstances under which he took the notes, and the suspicious appearances of the notes themselves, he could not be regarded as an innocent holder of the notes.