"so far as I am interested therein," be divided according to the said agreement signed by him on January 4th, 1884.

*Held*, (1) B., the executor of J. R., had a right to retain out of the residuary share of her estate assigned by the will of J. R., the full balance due on the said accommodation notes, although J. R.'s estate was insolvent.

R. S. O. c. 107, s. 30, abolishing the right of retainer in case of a deficiency of assets, does not affect the question.

(2) The agreement of January 4th, 1884, was binding on J. R., and was binding on his executor, and could not be impeached by his creditors.

*Bruce*, Q.C., for the plaintiff.

*Kittson*, for the defendant.

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Galt, J.] [January 12.

THOROLD MANUFACTURING CO. v. IMPERIAL BANK.

*Banks and banking—Action to recover amount of cheque—Indorsation—Company.*

Action to recover the amount of a cheque made payable to the order of the plaintiffs, and alleged to have been paid by the defendants without the proper endorsation of the plaintiffs.

The by-laws of the plaintiffs' company provided that all moneys should be received by the treasurer, and deposited by him to the credit of the company, and drawn out on cheques made by the secretary, and countersigned by the treasurer.

It appeared that the property of the company belonged almost entirely to R. B. M. who was president and treasurer, and whose son R. D. M. was secretary.

On the occasion when the cheque was given, R. D. M. had gone to the makers of the cheque to receive the money for certain goods supplied to them by the plaintiffs, and had received the cheque, which he endorsed in the name of the plaintiffs, signing his name as secretary.

It appeared that on several previous occasions he had done the same thing with cheques drawn on the defendants, and who, therefore, had no reason to believe that he was exceeding his authority, and it also appeared that he had acted as general agent of the plaintiffs' company.

*Held*, that the plaintiffs could not recover, and the action must be dismissed.

*Osler*, Q.C., for plaintiffs.

*Cox*, for defendants.

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## PRACTICE.

Ferguson, J.] [February 10.

RE CHRISTIE, CHRISTIE v. CHRISTIE.

*Appeal—Forum—Divisions of High Court—Sec. 25, O. J. A.*

*Held*, that the setting down in the Common Pleas Division of an appeal from a master's report in an action in the Chancery Division, was, having regard to sec. 25, O. J. A., a nullity, and could not avail the appellants to make their appeal in time. *Laidlaw* v. *Miller*, 11 P.R. 335, not followed.

*P. McPhillips*, for the appellants.

*E. Douglas Armour*, for the respondent.

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Proudfoot, J.] [Jan. 10.
Chy. Div'l Ct.] [February 23.

POWELL v. PECK, ET AL.

*Leave to appeal—Discretion—49 Vict. ch. 16 sec. 39 (O.).*

Leave was given to appeal from the decision of Proudfoot, J., 12 O. R. 492, as to the rate of interest after maturity in mortgage cases, because of the importance of the question involved and of conflicting decisions. An appeal now lies to the Divisional Court from a discretionary order, by virtue of 49 Vict. ch. 16 sec. 39 (O.), but that enactment has not altered the rule that a very strong case must be made out to induce the court to reverse such an order.

*Beck*, for the defendants.

*E. T. English*, for the plaintiff.