

C. P. Div.]

NOTES OF CASES.

[Chan. Div.]

Held, that the by-law should be quashed : for (1) The council had no power to authorize the undertaking of any work other than that petitioned for, but if that was impracticable or too costly they should have refused the petition ; (2) The petitioners had the right to withdraw at any time after subscribing the petition and before the contracts were let or the debentures negotiated, *i.e.*, while the council had control of the matters—the preliminary surveys and estimates being as much for the information of the petitioners as of the council ; (3) A sufficient number of petitioners, having withdrawn to reduce the number below the majority of those to be benefited, the by-law untruly recited that a majority, &c., had petitioned.

Clement, for motion.

Bethune, Q. C., and *Rykert*, contra.

COMMON PLEAS DIVISION.

Wilson, C. J.]

[Jan. 21.]

BERRY V. ZEISS, ET AL.

Married woman—Separate business—Personal liability.

Held, that debts contracted by a married woman in carrying on a business or employment, occupation or trade, on her own behalf or separately from her husband, may be sued for as if she were an unmarried woman, that is, without regard to separate estate.

Bethune, Q.C., for the plaintiff.

No one appeared for the defendant.

CHANCERY DIVISION.

Proudfoot, J.]

[Nov. 9.]

FARRELL V. CAMERON.

Trustee and cestui que trust—Marriage settlement.

The plaintiff, in 1854, being about to marry, conveyed certain lands to trustees—one of whom was her intended husband—upon trust to suffer her to receive the rents, etc., to her own use during her natural life, and upon her death, if she should have a child or children surviving her, in trust to convey the lands, etc., unto such

child or children, their heirs, etc., for ever, freed and discharged of the trusts mentioned in the deed ; and in case of her death before her husband without any child, in trust to permit him to receive the rents, etc., for life, and after his death, or in case he should die before the plaintiff, she leaving no child, then in trust to convey the said lands to her right heirs, freed and discharged from the trusts thereof. The deed gave the trustees power to sell or lease, and also to borrow on the security of the lands.

The husband died in 1879, there never having been any children of the marriage, and the plaintiff, who was then 53 years old, requested the trustees to reconvey the trust estate to her, which they declined to do without the sanction of the Court, as the trust for children was not confined to the issue of the then contemplated marriage, but was wide enough to include the children of any other marriage : but

Held, that as there were no children, and it must be assumed that the plaintiff never could have any children, she was entitled, as equitable tenant in fee simple, to call upon the trustees for a conveyance ; the costs of the trustees to come out of the estate.

McMichael, Q.C., for plaintiff.

McCarthy, Q.C., for defendant.

Boyd, C.]

[Jan. 11.]

TRUDE V. PHOENIX INSURANCE COMPANY.

Practice—Trial by Judge—Rehearing—Divisional Court, jurisdiction of—Judicature Act.

A cause having been heard and a decree pronounced therein on the 19th of May, 1881, and subsequently set down for re-hearing before the Divisional Court, after the coming into force of the Judicature Act :

Held, that Rules 274 and 317 restrict the jurisdiction of the Divisional Court after judgment to cases in which the findings of fact have been undisputed, and it is only sought to modify or set aside the conclusion drawn by the judges therefrom ; but if the appeal is on the whole case, as to both facts and law, it must be to the Court of Appeal.

Plumb for plaintiff.

Foster for defendant.