

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.

Boyd, C.]

[March 12.

RE QUIMBY, QUIMBY V. QUIMBY.

Will—Construction—Annuity and share under statute of distributions—Dower—Election.

A testator by his will directed his trustees, 1. To pay to his wife so long as she should remain his widow the clear yearly sum of \$500; and in the event of her marrying again, the yearly sum of \$300 only, from the time of such marriage. 2. When his son should attain the age of twenty-one years to make over to him one-half of the estate. 3. When the son should attain the age of thirty years to make over to him the whole of the residue of the estate—subject, however, to the payment of the annuity to the wife as aforesaid. 4. If the son should die before attaining the age of thirty years to hold "the said real and personal estate moneys and securities, or so much thereof as shall remain in their hands, in trust to distribute the same according to the Statute of Distributions."

The last codicil changing the trustees, constitutes them and the survivor of them, and the heirs, executors, administrators and assigns of such survivor, trustees of all the property in the will mentioned, and with all the powers originally given by such will to the trustees.

The son and only child attained the age of twenty-one years, received half of the estate, and died before attaining the age of thirty years.

Held, that the use of the word *assigns* would point to the inference that the distributees under the statute would be trustees for the payment of the annuity to the widow, and that she was entitled to her share (one-half) of the residue under the Statute of Distributions in addition to her annuity.

Held, also, that as the testator had dealt with his whole estate, real and personal, in the residue in question, as a blended fund to be distributed after the manner of personalty, that the widow was not entitled to dower out of the real estate as well, but was put to her election.

Chalmers v. Stovill, 2 Ves. & Bea. 203, and *McGregor v. McGregor*, 20 Gr. 45, referred to and followed.

Moss, Q.C., and *Carscallen*, for plaintiffs.

Hoyles, for the trustee.

W. A. Reeve and *Tetzels*, for other defendants.

Boyd, C.]

[March 12.

McDOUGALL V. LINDSAY PAPER MILL CO.

Master's Report—Priority—Jurisdiction of Master to question judgment.

Plaintiff having brought his action on a mortgage and obtained a judgment under Rule 78, O.J.A., a reference was ordered to the Master at Lindsay.

On the reference several judgment creditors were made parties, and the Master decided that they, although subsequent in date to the plaintiff's mortgage, were entitled to priority over the mortgage on the ground that the mortgage was not sanctioned or ratified by the shareholders of the company.

Held, on appeal, that the Master had no jurisdiction to question the validity of the mortgage or the judgment founded thereon, and that the other judgment creditors are bound by the judgment the same as the defendants, unless they move to vary or set it aside, as notified by notice T. served under G. O. 444, and that the priorities should be reversed, the plaintiff being declared to be first.

Moss, Q.C., and *Hudspeth*, Q.C., for appeal.

Osler, Q.C., and *M. McIntyre*, contra.

Ferguson, J.]

[March 19.

WARDROPE V. CANADIAN PACIFIC R. W. CO.

Garnishee proceedings—Debtor and creditor—Evidence.

A judgment creditor does not become a creditor of the garnishee by service of the garnishee order upon him. There is not the existence of a debt from the garnishee to the attaching creditor. He has the right against the garnishee that is expressly given him by the estate, and nothing more; and although the garnishee can be compelled to pay the attaching creditor if the course pointed out by the statute is pursued, the position of the garnishee is not that of a debtor to the attaching creditor. He continues to be a debtor to his own creditor until he has paid into Court, or to the attaching creditor after order so to pay, or a levy of the amount has been made of his property, when he ceases to be a debtor as to the amount paid or levied.

Held, therefore, that the plaintiff, who had obtained a garnishee order, garnishing a debt due from the B. and O. Railway to W. S., his judgment

Followed.
Sel-
kirk &
Mund-
207 and
Cresc. R.
Co., 21
Q.L.R.
109.

*Refer-
ed to:*
Row-
land &
Bur-
well
12 Pk
607;
In re
Rom-
mion
Prior-
doubt
Assoc.
25 Qd
619;
Row-
land &
Bur-
well
12 Pk
607.