

Chan. Div.]

NOTES OF CANADIAN CASES.

[Prac.]

26, pending an appeal to the Court of Appeal, the proceedings to enforce the injunction are, by virtue of s. 27 of the said Act, thereupon stayed; and a writ of sequestration cannot therefore be obtained, pending the appeal, on the ground of non-compliance with the injunction. *Dundas v. Hamilton and Milton Road Co.* 19 Gr. 455, followed, and preferred to *McLaren v. Caldwell*, 29 Gr. 438.

Folingsbee, for the motion.
Cattanach, contra.

Proudfoot, J.]

[Nov 22.]

PARADIS V. CAMPBELL.

Will—Construction—"Children."

Hearing on further directions. A testator devised his farm to his wife for life, and at her decease to be disposed of by his executors in the following manner, viz.:—One-third to his sister F., to her heirs and assigns for ever; one-third to his sister H., her heirs and assigns forever, and the remaining third to the lawful children of his sister P., their heirs and assigns forever, to be apportioned and divided by his executors unto them equally, share and share alike. "And in case either or both of my sisters aforesaid, that is F. or H., is or are dead, or may or do die previous to my decease, then and in that case my will and meaning is that each of their portions bequeathed and devised to them respectively, shall be by my executors apportioned and divided between their and each of their heirs, share and share alike, that is each sister's share to each sister's children to them their heirs and assigns for ever."

The testator's sister H. predeceased him, leaving children, who survived the testator, and having a daughter, who died before her mother, leaving a son H. H.

Held, that H. H. took no share of the devise to his grandmother H. It was clear the testator was using the word "children" in a colloquial and not in a technical sense as meaning "children;" but the legal construction of the word "children" accords with its popular signification, viz., as designating the immediate offspring.

Walkem, for the plaintiff.

F. Arnoldi, for the adult defendants.

T. S. Plumb, for the infant defendants.

PRACTICE.

Wilson, C. J.]

[Nov. 13.]

RE MEEK V. SCOBELL.

Prohibition—Division Court—Jurisdiction—Application of deduction from claim.

Motion for prohibition to the 18th Division Court of the County of York. The plaintiff brought his action in the Division Court, claiming \$42.06 debt, and \$62 damages, and at the end of his claim wrote "plaintiff abandoned \$11.39."

Held, that it cannot be assumed the plaintiff, by his claim, reduced his demand for damages so as to bring it within the jurisdiction of the Division Court, as there are other claims in respect of which such abandonment may presumably be applied as well as to the demand for damages.

Prohibition granted with costs.

A. C. Galt, for the motion.

E. Meek, contra.

Wilson, C. J.]

[Nov. 16.]

DEMOREST V. MIDLAND RY. CO.

Mandamus—Disobedience to—Attachment—Officer of corporation.

Where a *mandamus* was directed to a railway company, commanding the company to perform certain acts, and was served upon the president of the company,

Held, that an attachment against the president of the company is not an available proceeding for default in performing an action which he could not by himself perform.

Where the act commanded could only have been done, so far as appeared, by a majority of the board of directors of the company,

Held, that in order to bring them into contempt and subject them to attachment, they should have been served with the *mandamus*.

Held, that sequestration is not the proper remedy for disobedience to *mandamus*.

Holman, for the plaintiff.

A. H. Marsh, for the defendants.