

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

assignment would be subject to all the equities against such claim, and against the assignor as a director and trustee of the company's funds in the proceedings under the winding up order.

Bain, Q.C., for the appeal.

Falconbridge, Q.C., contra.

Rose, J.]
Chy. Div. Ct.]

[June 1.
[June 29.

McPHAIL v. McINTOSH.

Will—Construction—General intention in favour of a class—Particular intention in favour of individuals.

Action for recovery of land.

It appeared that A. McP. in 1826 bought the north half of lot 26, and lived on lot 25, adjoining, until his death in 1841.

J. McP., his son, lived on lot 26 from 1826 till October, 1878, when he died.

By will in 1841 A. McP. devised to J. McP. lot 26, but added, "he is not to sell or dispose of the said lands nor any timber or wood now growing on the said lot; on the contrary, the land is to devolve on the most deserving of his children according to the discretion of my executors, that is to say after his own death."

In February, 1869, J. McP. conveyed the north half of lot 26 to the defendant.

The plaintiff, a son of J. McP., claimed to be entitled under the above will.

The executrix of A. McP. made no selection as to who was the most deserving of his children on which the land should devolve.

Held, that the plaintiff was entitled to judgment, for that J. McP. only took a life estate, and though no selection had been made among the children of A. McP. the court would carry out the general intention in favour of the class by holding that the estate descended on the twelve children of J. McP., and that the plaintiff, having purchased or obtained a conveyance of six-twelfths of the estate, was entitled to seven out of the twelve shares of it.

Leitch, for the plaintiff.

J. MacLennan, Q.C., for the defendant.

Ferguson, J.]

THE ONTARIO AND SAULT STE. MARIE RY.
CO. v. THE CANADIAN PACIFIC RY. CO.

Railway Acts—Special Act—General Act, construction of.

Where a railway company is incorporated by a special Act, and there are provisions in the special Act, as well as the general Railway Act, on the same subject, which are inconsistent; if the special Act gives in itself a complete rule on the subject, the expression of that rule amounts to an exception of the subject-matter of the rule out of the general Act. When the rule given by the special Act, applies only to a portion of the subject, the special Act may apply to one portion, and the general Act to another.

The probable intention of the legislature is important in considering a matter of that character.

S. H. Blake, Q.C., and *Cassels, Q.C.*, for the plaintiffs.

C. Robinson, Q.C., and *Moss, Q.C.*, for the defendants.

Boyd, C.]

[May 27.

BANK OF COMMERCE v. NORTHWOOD.

Bills and notes—Agreement with maker—Release of indorser.

The holder of certain promissory notes entered into an agreement with the maker and certain indorsers to extend the time for the payment of the notes without the consent or knowledge of the defendant, who was a subsequent indorser of the same notes; but the agreement expressly reserved all rights and remedies against the sureties.

Held, that this being so, the defendant as surety was not discharged. And also that the reservation of the surety's rights against those for whom he was surety (that is to say, the maker and the prior indorsers) was necessarily involved in the reservation of the rights and remedies of the holder against him as surety.

The agreement further provided for renewal for six months, from time to time, till the notes were paid; but these renewals were assented to by the defendant, who joined therein and was not prejudiced thereby.