

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

Ferguson, J.]

[April 30.]

RE COULTER ET AL. AND SMITH.

*Vendors and Purchasers Act, R. S. O. c. 109—
Absent husband—Wife's conveyance.*

J. H. by his will, dated April 14, 1874, devised certain property to his daughter, M. A. J., for life with remainder to her children, and died soon after making the will. M. A. J. died about 1870 leaving five children, the youngest of whom came of age in 1884. Before the death of J. H., one of the children, M. J. J. married one C. and C. in 1870 deserted his wife and had not been heard of afterwards.

Held, that M. J. J. could convey all her interest in the property without the concurrence of her husband.

C. L. Ferguson, for the vendors.

W. Middleton Hall, for the purchaser.

Ferguson, J.]

[May 1.]

RE COOKE AND DRIFFEL.

Will—Devise—Estate—R. S. O. c. 109—Title.

R. C. by his will devised all his personal estate to his wife, M. S. C., to be held for the interest of his son, A. S. C., when he shall have arrived at the age of twenty-four years; and an annuity to his wife, M. S. C., for life; appointed her guardian to the son to take charge of all remaining money that should accrue from all sources; such money to be used for the necessary expenses of education, etc., for the son. He desired that the wife should have control of all money coming to the son till he was of the age of twenty-four years, and at that time all rents and other property should come into his possession except the annuity; that at the death of the wife all rents and all interests and all property should pass into the possession of the son to be owned by him, his heirs and assigns forever. In the case of the death of the wife before the son attained twenty-four another guardian with similar powers was appointed. In case of the death of the son before his mother then all the property and rents, etc., were to be hers during her natural life, and after her death one half to go to the testator's relations and the balance to the relations of

the wife, she making this disposition before her death; but if the son at the time of his death should leave a wife or children then all property should be subject to such disposition as he should make at the time of his death. In an application under the Vendors and Purchasers Act, R. S. O. 109, for the opinion of the Court, it was

Held, following *Gairdner v. Gairdner*, 1 O. R. 184, that when a legatee or devisee is to have the absolute control of property at a specified time a subsequent gift-over will be limited to take effect before the time, and the son here having attained the age of twenty-four years and come into possession and control, the subsequent gift-over cannot affect his estate, or interest which has become absolute.

If the lands passed by the will the son and the widow joining as grantors can convey such title as the testator had at the time of his death.

If the lands did not pass by the will the son as heir at law and the widow as to dower can convey title as above.

Thos. J. Robertson, for the vendors.

Masten, for the purchaser.

BANK OF HAMILTON V. NOYE MANUFACTURING COMPANY.

Warehouse receipts—Validity of—Negotiation of note—Commingleing of property—Tracing property covered by receipts—Affidavit evidence.

T., a miller, gave warehouse receipts for wheat to the plaintiffs attached to notes payable to their order to take up notes maturing which were secured by like receipts. The receipts were in the following form:—"Received in store in my warehouse or mill from farmers 2,000 bushels of wheat to be delivered to the order of myself to be endorsed hereon. This is to be regarded as a receipt under the provisions of statute 43 Vict. cap 22. The said wheat is separate from and will be kept separate and distinguished from other grain." The receipts were endorsed in blank.

Held, that the notes and receipts attached might be read together; that the endorsement of the receipts in blank was under the circumstances unobjectionable, and that they were valid in the hands of the bank.