

of the E. & N. A. Ry. Co. with them the plaintiffs obtained an *ex parte* injunction order, which it was now sought to dissolve.

Held, (1) that the agreement of the E. & N. A. Ry. Co. with the plaintiffs was not void as an agreement in restraint of trade, or as creating a monopoly, and being contrary to public policy.

(2) That the agreement in respect to the transportation of employees and materials was not invalid under section 240 of 51 Vict. c. 29 (D).

(3) That the plaintiffs, though incorporated in the State of New York, could validly contract with the E. & N. A. Ry. Co., and enforce the agreement by a suit brought in this country.

(4) That the agreement was not invalid under section 92, sub-section 1 (a), of the B. N. A. Act, 1887.

(5) That the N. B. Ry. Co., having leased the road with notice of the agreement, and having acquiesced in it, were bound by it. *THE WESTERN UNION TELEGRAPH COMPANY v. THE NEW BRUNSWICK RAILWAY COMPANY, THE CANADIAN PACIFIC RAILWAY COMPANY, AND THE ST. JOHN AND MAINE RAILWAY COMPANY.* 338

TENANCY BY THE CURTESY.

See CURTESY.

TITLE—Bill 179, 189, 243
See WRIT OF SUMMONS.

—Change of parties 513

TRADE MARK—Injunction—Colourable imitation—Words calculated to deceive.]

Plaintiff was a manufacturer of lime at Greenhead, and sold it in barrels marked "Greenhead Lime," and it had a market value and reputation as such. The defendants manufactured lime at the same place, and were restrained by injunction from using the plaintiff's trade mark, or any colourable imitation thereof. Subsequently the defendants marked their lime as "Extra No. 1 Lime, manufactured by Raynes Bros. at Greenhead." The general appearance of the defendants' mark resembled the plaintiff's.

Held, that there had been a breach of the injunction. *ARMSTRONG v. RAYNES ET AL.* [144]

TRADE NAME—Fraudulent use of name—Intention to deceive the public—Injunction.]

A right to the use of a name to denote a place of business carried on by a particular person will be protected where it would be a fraud upon that person and the public for another person to make use of it in such a way as to deceive the public into believing that they were dealing with the person who originally used it. *McCORMICK v. MCCORMICK* 332

TRANSFER OF ACTION 509
See PARTIES.

TRUST—Construction—Grant to issue—Death of one of the issue before distribution—Share vesting in survivor.]

A trust deed provided that upon the death of F. the estate could be divided to and between all the daughters of the donor who should survive him, and the issue of any daughter who might have died before him leaving issue, in equal shares, but so that the issue of any daughter who might so die leaving issue should only take the share their deceased mother would have taken had she survived the donor and been living at the time of distribution, and that if any, who might survive the donor, died before the said F. leaving issue, then the issue of such deceased daughter should take and receive the share their mother would have taken had she been living at the time of distribution, and that if any daughter survived the donor, and died before the said F. without issue, then the share of the daughter so dying should go and be divided equally among her surviving sisters or sister and the issue of any deceased sister; such sister, however, to take only the share their deceased mother would have taken had she been one of the surviving sisters; that the share of each of the said daughters who might be living at the time of the distribution should be paid to them as each of them came of age, but that the share coming to the issue of any deceased daughter might be paid, notwithstanding such issue might not at the time of distribution be of age. One of the daughters died in the lifetime of F., leaving two children, one of whom predeceased F.

Held, that the surviving child took the whole of the mother's share. *GILBERT v. DUFFUS ET AL.* 423

TRUST DEED—Assignment for benefit of creditors—Unenforceable claim—Construction of deed 372
See BANK. 2.

TRUSTEE—Accounts—Probate Court—Jurisdiction 387

—Advice of Court—Petition, form of—Affidavit of truth—Hearing—Parties to be represented—Direction by Court—C. 43, C. S. N. B., s. 130.] On an application by an executor under section 130 of chapter 43, C. S., all of the facts upon which the advice of the Court is sought must appear in the petition itself. If the facts are not stated correctly, the advice given will be no protection to the petitioner.

The facts in the petition must be sworn to by an accompanying affidavit of the petitioner, or his agent having a knowledge of them.

The definite question to be asked should be propounded in the petition, and not a general reference made to the Court for its opinion.

The petition should be presented to the Court *ex parte*, when direction will be