1st May, 1886, to 1st August, 1886, under same name. It was agreed between D. & P. that D. should not sign firm's name to bills or notes. Their dissolution was not advertised till 20th August, 1886. D., for his own purposes, and without knowledge of P., on 11th August, 1886, signed notes for $21,000 with firm's name and gave them to I. The note in question in this action was one of these, but dated 30th July previously. Plaintiffs, in ignorance of P. being a member of the firm, took the note, without notice of any infirmity, in security for a pre-existing overdue debt. The judge at the trial told jury plaintiffs could resort to either for payment.

Held, misdirection, and that there was no such right of election; that creditor must prove who his debtor was, and defendants need not prove they were not the debtors.

Held, also, if note given before 1st August, judge should have asked jury which firm D. intended to bind; but as note not given during the partnership, and plaintiffs were ignorant of firm, or that P. was a member, the question was not material.

Held, also, that plaintiffs being ignorant of firm of D. & Co., or its members, and having had no dealings with it, P. was not liable on the note signed after 1st August, when the dissolution took place, though before 20th August when publication of same was made. The facts being all before them, the court, instead of ordering new trial, gave judgment for P., with costs.

J. K. Kerr, Q.C., and *John A. Paterson*, for motion.

Lash, Q.C., and *Holmes*, contra.

Div. Court.]

BALLARD v. STOVER.

Will—Devise—Trust—Trustee—Beneficial interest—Intestacy—Construction—"Share and share alike"—"Survivors and survivor."

A testator devised as follows:

"I will devise and bequeath unto William Stover, Ephraim Stover, Adam J. Stover, William Francis Jacob and Jacob Stover . . . their heirs, executors, administrators and assigns for ever, all my real and personal property, share and share alike . . . upon trust that they, or the survivors, or survivor of them shall, out of the said real and personal estate, suitable and well, support Mary Stover, my present wife, in as comfortable a position as she now has with me, for and during her natural life.

"I hereby nominate, constitute and appoint the aforesaid W. S., E. S., A. J. S., and W. F. J., executors of this my last will and testament."

The plaintiff and the defendants, the above named executors and the other defendants, were all nieces and nephews of the testator, and would have been entitled to share in the testator's estate in the case of his dying intestate.

Held (ARMOUR, J., dissenting), that the trustees took the beneficial interest in the estate, subject to the maintenance of the testator's wife.

Per ARMOUR, J.—The trustees took no beneficial interest in the estate, and after the death of the testator's wife, the purposes of the will were satisfied, and the estate passed to the plaintiffs and those entitled as in the case of intestacy.

Div. Court.]

WINFIELD v. FOWLIE.

Interpleader—Practice—Evidence of intention to extend operative force of a deed—R. S. O. caps. 102 and 104—Short Forms Acts—Onus probandi in interpleader issues—Mill and machinery, realty or personalty—Dominant and servient tenements—Partnership rights under fi. fa. against one partner—Analogy between operative words in wills and deeds.

In December, 1874, Hugh Kean purchased machinery in question for $1,529. In March, 1875, Hugh K. placed this machinery in the mill in question, which cost $600, and was erected by Alexander K., with Hugh K.'s money, in the water opposite lot 15, con. 7, township of Tay, county of Simcoe, over two hundred feet from low water line, and outside the limits of lot 15, even had the lot been all dry land.

The mill was built on a framework of logs sunk to the bottom of the bay and kept there by stones, the foundation of the mill being bolted to the upper logs, and the machinery