NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

SUPREME COURT OF CANADA.

Ontario.]

MERCHANTS' BANK v. KEEFER.

Will—Construction of—Contingent interest.

The question argued on this appeal was as to the construction of a particular devise contained in the will of T. McK., whereby the testator gave a certain parcel of land to one of his sons. T. McK., the testator, having previously given all his estate, real and personal, to trustees in trust for his wife for life or during her widowhood, made the devise in question as follows:—"In trust also that at the death or second marriage of my said wife, should such happen, my son Thomas, if he be then living, shall have and take lot number 1, etc., which I hereby devise to him, his heirs and assigns, to and for his and their own use forever." The testator then gave to his other sons and to his daughters other real estate in fee. He directed that all the said devises "in this section of my will mentioned and devised" should take effect upon and from the death or marriage of his wife, and not sooner.

He gave all his other lands in trust for sale, the rents and proceeds to be at his wife's disposal while unmarried, and after her death or marriage all his personal property and estate remaining was to be equally divided among his children: provided always, that in the event of any children dying without issue before coming into possession of his or her share "of the property or money hereby devised or bequeathed," the share of such child should go equally among the survivors and their issue, if any, as shall have died leaving issue. The residuary clause was as follows:—"All my other lands, tenements, houses, hereditaments, and real estate," etc.

Held (RITCHIE, C.J., and FOURNIER, J., dissenting and reversing the judgment of the Court below) That the interest devised to Thomas was contingent upon surviving his mother.

Per STRONG, J.—That as a devise of *other* lands includes undisposed of interests in lands, in which partial interests or contingent interests which have failed have been previously given, the devise of lot number 1 at Thomas' death formed part of the residuary lands of the estate subject to the provisions as to survivorship and substitution mentioned in the will.

Mrs. E. Keefer, one of the testator's children, having died in the lifetime of her mother, the substitution in favour of her children was restricted to the children who survived their mother, and they became entitled absolutely among themselves as tenants in common (R. S. Ont. ch. 105, sec. 11) to an equitable estate in fee simple in remainder expectant on the death or second marriage of the testator's widow in one undivided fourth part of said lot number 1. And that upon the death of the said testator's widow, the testator's children, Annie Keefer, Christine McKay and J. Clark, the three surviving daughters of the testator, became entitled absolutely to an equitable estate in the remaining three undivided fourth parts of lot 1 as tenants in common in fee simple.

Appeal allowed, with costs of all parties to be paid out of the estate of testator.

Robinson, Q.C., and *Gormully* for appellants.

S. H. Blake, Q.C., and *McIntyre* for respondents.

Ontario.]

PETERKIN v. MCFARLANE ET AL.

Purchase with agreement to resell—Registry Act notice.

P. filed a bill against McF. *et al*, claiming a right of redemption to a certain piece of land sold absolutely in form to McF., and subsequently resold by McF. to McK. and by the latter to B. By his answer to this bill B. admitted that the right of redemption had been given, and by amended answer set up the Registry Act and a *bona fide* purchase without notice. The Judge who tried the case found that the redeemable character of the transaction was admitted by the pleadings and proved, and that as a matter of fact the evidence established clearly that the parties had actual notice of P.'s right of redemption. This finding on this question of fact was affirmed by the Court of Appeal, and on appeal to the Supreme Court of Canada it was *held* (GWYNNE, J., dissenting) that there was evidence to justify the conclusion arrived at by the Courts below, that the parties had actual