

[Prac.]

NOTES OF CANADIAN CASES.

[Prac.]

moneys were to be advanced as the building progressed upon progress certificates of the architect of the house.

Evidence was given to show that the money was actually advanced and went into the building. Afterwards, on March 10th, 1886, after the completion of the building, William Hague died. In the Master's Office his widow claimed that she was entitled to dower in the full value of the land, though the above mortgage still subsisted upon it and had to be paid off out of the purchase moneys. It was objected, on behalf of the creditors, that she was only entitled to dower out of the equity of redemption, and in the value of the equity of redemption after paying off the mortgage.

Held, reversing the decision of the Master in Ordinary, that the widow was entitled to dower out of the equity of redemption in the full value of the lands.

C. Moss, Q.C., and A. H. F. Lefroy, for the creditors.

J. Reeve, for the widow.

H. A. Reesor, for the executor and trustee.

PRACTICE.

Rose, J.]

[September 9.]

SMITH V. CLARK.

Discovery—Action on building contract—Examination of architect.

In an action against the trustees of an Orange Lodge for the price of work and materials furnished in building a hall in which the principal defendant was examined and could give no information as to the matters in dispute, and it appeared from his examination that the architect employed by the defendants was the only one who could give the information sought, an order was made for the examination of the architect for the purpose of discovery only.

O'Sullivan, for the plaintiff.

Gwynne, for the defendants.

Rose, J.]

[Sept. 9.]

ROSS V. THE CANADIAN PACIFIC RY. CO.

Change of venue—Preponderance of convenience.

An action for trespass to land by cutting timber, etc., was commenced in Toronto where the solicitors for the plaintiff, the defendants and the third parties resided. The plaintiff lived in Quebec and his agent in Toronto. The third parties, who were really in the position of defendants, lived in Pembroke. The defendants swore that they would have at the trial four witnesses from Pembroke or vicinity, one from North Bay, two from Dakota, U.S.A., and one from Ottawa. The plaintiff swore to eight witnesses, all in Toronto or west of Toronto. The *locus in quo* was neither in the County of York nor Renfrew.

Held, that there was not sufficient preponderance of convenience in favour of Pembroke to warrant changing the venue to that place.

Shroder v. Meyers, 34 W. R. 261, followed.

W. H. P. Clement, for the plaintiff.

MacMurchy, for the defendants.

Rose, J.]

[September 9.]

KELLY V. WOLFF.

Landlord and tenant—Ejectment—Title of landlord, expiry of—Bona fide defence—Ejectment Act, ss. 65, 66.

In an action of ejectment by a landlord against a tenant whose term had expired,

Held, that the defendant was not precluded from setting up that the plaintiff's title expired or was put an end to during the term, and to raise such defence it was not necessary for the tenant to go out of and then resume possession.

Sections 65 and 66 of the Ejectment Act do not apply where a *bona fide* defence or dispute is raised; and in this case a motion by the plaintiff for security for damages and costs, under these sections, was refused.

Quære, whether ss. 65 and 66 would apply to any case where the tenant actually gives up possession, so that the landlord is in possession, and then retakes.

Alan Cassels, for the plaintiff.

Aylesworth, for the defendant.