

Q. B. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

summarily; and that it was bad also in not shewing the time and place of the commission of the offence.

Remarks upon the improper use of the criminal law in aid of civil rights. The conviction was quashed with costs.

Clements, for the applicant.

Holman, contra.

Rose, J.]

HUGHES ET AL. V. BOYLE ET AL.

Appeal bond—Discontinuance—Liability of surety.

The condition of an appeal bond in which the defendant was a surety, was that the appellant would effectually prosecute his appeal and pay such costs and damages as might be awarded in case the judgment appealed from was affirmed. The appellant discontinued the appeal pursuant to R. S. O. cap. 35, sec. 41, which enacts that "thereupon the respondent shall be at once entitled to the costs of and occasioned by the proceedings in appeal, and may either sign judgment for such costs or obtain an order for their payment in the court below, and may take all further proceedings in that court as if no appeal had been brought." The registrar, to whom the matter was referred, assessed the damages at the respondents costs of opposing the appeal.

Held, affirming his finding, that the judgment had been affirmed by the discontinuance, and that these costs had been awarded to the respondent by virtue of section 41.

Quære, as to the meaning of the expression "effectually prosecute."

Donovan, for appeal.

Millar, contra.

CHANCERY DIVISION.

Boyd, C.]

[May 7.]

AMSDEN V. KYLE

Will—Construction—Election.

When a testator by his will bequeathed and devised to his nephew J. K., all his real and personal estate subject to the following bequest: "to my wife, E. K. a one-third interest in all my real and personal estate so long as she shall remain unmarried,"

Held, that the widow must elect between

the bequest of the will in her benefit and her dower; for although the devise of one-third of the testator's land during widowhood would not *per se* interfere with the widow's right as doweress to claim another third for life, yet the fact that the testator gave his wife a one-third interest in all his real and personal estate as long as she should remain unmarried, imported the same manner of division in the case of the land as in the case of the personality, viz.: a division of the entire property of each kind, which would be defeated if the dower were first substracted from the reality.

Re Quimby, *Quimby v. Quimby*, 20 C. L. J. 133 followed.

R. W. Meredith, for the plaintiffs.

W. R. Meredith, Q. C., for the infant defendant.

Boyd, C.]

[May 16.]

RE BARWICK AND LOT 3 ON THE NORTH SIDE OF KING STREET, IN THE CITY OF TORONTO, ON THE PLAN OF THE GAOL AND COURT HOUSE BLOCK.

Vendors' and Purchasers' Act, R. S. O. c. 109—*Power to invest—Power to sell.*

A., on his marriage, having conveyed a certain farm, which was then under contract of sale, to the trustee of his marriage settlement, provided that the purchase money, if the sale was carried out, and the land itself if the sale was not carried out, was to be held subject to the trusts of the settlement, as follows:—"And it is hereby agreed by and between the parties hereto, that on the payments of principal being made from time to time by the said J. J. V. (purchaser), the said S. B. H. (trustee), or any other trustee or trustees to be appointed as hereinafter mentioned, shall invest the same in such estate or securities, whether real or personal, and of what nature or kind soever as to him or them shall seem best and most advantageous to the interest of the trust hereby created, and, on such investments being from time to time realized, the same to reinvest in like manner." The settlement also provided that if the said J. J. V. forfeited any right he had to the said real estate it should vest in the trustee for the purposes and uses of the said trusts therein-before mentioned as regards the purchase