

Held, that by virtue of R. S. O. c. 107, s. 3, and Imp. Stat. 44 and 45 Vict. c. 41, s. 31, all the powers, authorities and discretions contained in the trust deed are to be exercisable by a new trustee as if he had originally been nominated a trustee by the deed creating the trust; that the original trustees had power to sell; that the new trustee stepped into their place, and could exercise all the powers for realizing the trust property; that they had not as an assignee of the estate, but as if appointed a trustee by the deed creating the trust, and that a good title could be made by R. G. to the purchaser.

R. L. Fraser, for the purchaser.

Jas. Reeve, for the vendor.

Ferguson, J.]

[Nov. 30, 1887.

Re GREEN AND ATKIN.

*Vendors and Purchasers Act, R. S. O. c. 109—
Variation of power of sale in short form of
mortgage—Month substituted for months.*

G. was assignee of a mortgage made pursuant to the Act respecting Short Forms of Mortgages, which contained a power of sale in the words "Provided that the said mortgagee on default of payment for one month may, on giving notice in writing, enter on and lease or sell the said lands."

In an application under the Vendors and Purchasers Act, R. S. O. c. 109, when the purchaser contended that the substitution of "one month" for "months" was such a variation of the form that G. as assignee could not make title.

Held, that G. could make a good title, and the purchaser must accept it.

Muir, for the vendor.

F. E. Hodgins, for the purchaser.

Boyd, C.]

Re LONDON STEEL WORKS COMPANY—
DELANO'S CASE.

*Corporations—Contributory—Variation from
prospectus in respect to amount of capital.*

D. subscribed for 50 shares in a company to be formed, of which the capital was, according to the prospectus, to be \$75,000 in 750 shares of \$100. Subsequently the promoters obtained letters patent under the R. S. O. c. 152, by which the capital was fixed at double

the amount, viz., \$150,000 in \$100 shares. This change was not communicated to D., nor was there any allotment of stock to him, no entry of his name in any stock book, no acting on his part as shareholder. The Company was in process of winding up.

Held, that D. was not liable as a contributory in respect to any shares.

The amount of a company's capital is one of those things which, when fixed, cannot be varied without the consent of all who join the company. Here there was an important and material variance between the prospectus and the charter of the company, to which D. did not consent, and of which he was not informed till after the winding up had begun.

G. C. Gibbons, for the company.

M. D. Fraser, for the alleged contributory.

Full Court.]

[Dec. 21, 1887.

MORGAN v. MORGAN.

*Dower—Damages for detention—Alienation
of husband.*

Held, That a widow cannot recover damages for detention of dower when her husband did not die seized, even though she made demand for dower.

Lush, Q.C., for the defendant (appellant).

Idington, Q.C., for the plaintiff (respondent).

Full Court.]

[Dec. 21, 1887.

JONES v. McGRATH.

*Husband and wife—Direct deed from husband
to wife.*

The plaintiff purchased the lands in question from Susan McGrath for \$3,000, received a conveyance dated March 28th, 1887, and paid the purchase money. Susan McGrath was the wife of James McGrath, who had by a previous deed, dated October 18th, 1884, conveyed or purported to convey the lands to her for an expressed consideration of \$100. The plaintiff now claimed possession of the lands against James McGrath, who defended on the ground, that his deed to his wife was void.

Held, That the non-suit directed by the trial judge must be set aside and a new trial ordered, for that the said learned judge had erred in holding that the conveyance from the husband to the wife was necessarily void to all intents and purposes.