

MAGISTRATES, MUNICIPAL, INSOLVENCY, & SCHOOL LAW.

NOTES OF NEW DECISIONS AND LEADING CASES.

TAX SALE—ADVERTISEMENT.—Where a tax sale was advertised in the *Canada Gazette* for thirteen successive weeks before sale, but such thirteen weeks did not amount to three calendar months from the date of the first publication, it was held that the irregularity did not invalidate the sale.—*Connor v. Douglas*, 15 U. C. Chan. R. 456.

SIMPLE CONTRACTS & AFFAIRS OF EVERY DAY LIFE.

NOTES OF NEW DECISIONS AND LEADING CASES.

CORPORATION.—A bill will lie by a member of the Corporation of the Church Society of the Diocese of Toronto, on behalf of himself and all other members of the Society, to correct and prevent alleged breaches of trust by the Corporation; and to such a bill the Attorney-General is not a necessary party.—*Boulton v. The Church Society of the Diocese of Toronto*, 15 Chan. R. 456

POSSESSION NOT NOTICE UNDER REGISTRY ACT OF 1868.—Where a father and son lived together on certain land of the father, and continued to do so after a conveyance by the father to the son, it was held that the son's possession after the conveyance did not affect a subsequent purchaser from the father.

Possession is not such notice as, under the late Registry Act, postpones a registered deed to the prior unregistered title of the party in such possession.—*Sherboneau v. Jeffs*, 15 Chan. Rep. 574.

MORTGAGOR AND MORTGAGEE—PROVISO FOR CONTINUANCE IN POSSESSION BY MORTGAGOR—DISTRESS CLAUSE—CONSTRUCTION—27 & 28 VIC. CAP. 31—PLEADING.—A clause in a mortgage that the mortgagor shall continue in possession, coupled with his occupation in pursuance of such clause, and coupled also with a covenant for distress, in accordance with the terms of clause 15 of the 2nd schedule to 27 & 28 Vic. cap. 31, creates the relationship of landlord and tenant at a fixed rent.

Held also, that by the indenture of mortgage set out below, the tenancy created was until the day of repayment of the principal, for a determinate term, and thereafter a tenancy at will at an annual rent, incident to which tenancy was the right of distraining upon the goods of third persons upon the premises; but, held, on demur-

rer, that the avowries set out below, justifying under such a distress clause contained in a mortgage, were bad, as not alleging that the mortgage contained a provision that the mortgagor should be permitted to continue in possession of the mortgaged premises, nor that he did occupy, in pursuance of such permission, at the time of the distress, or at any time.—*Royal Canadian Bank v. Kelly*, 19 U. C. C. P. 196.

MORTGAGEES—POSSESSION NOTICE OF TITLE—REGISTRATION—EVIDENCE—COSTS.—The rule that possession is notice of the title of the party so in possession considered and acted on.

The plaintiff purchased the land in question from J., who had purchased from G., no conveyance having been made to J. by G., who afterwards conveyed the same land to T., a son of the plaintiff, who mortgaged it, and represented the property as his own; the plaintiff being all the while in possession. The title was not a registered one.

Held, that the mortgagees were affected with notice of the plaintiff's title by reason of his possession, although there was no pretence of actual notice to them; and they having omitted to set up the registry laws as a defence, liberty was given them to apply for leave to do so, if so advised.

A person having a paper title to land of which he was not the actual owner, created a mortgage thereon to a person not a party to a suit, by the party beneficially interested, to get rid of another mortgage created on the estate, was asked if he had given notice of the claim of the real owner at the time of the alleged execution of the first mortgage, which he asserted he had given, and also denied having made such mortgage; evidence was called to contradict him.

Held, that this could not be deemed a collateral issue, and therefore such evidence was admissible.

The beneficial owner of land omitted to have the paper title thereto in his own name, and thus enabled his son, who held such title, to mislead parties into accepting a mortgage thereon from the son: the court, though unable to refuse him relief, in a suit brought to set aside such mortgage, under the circumstances, refused him his costs.—*Gray v. Couchner*, 15 Chan. R. 419.

STAMP ACT, 27, 28 VIC. CH. 4—CONSTRUCTION—PENALTY.—The Stamp Act does not require an instrument to be stamped which with stamps would not be valid for some purposes; or, *semble*, which would not be a promissory note, draft, or bill of exchange.

No penalty therefore can be recovered under 27, 28 Vic. ch. 4, sec. 9, for not affixing stamps