

Ct. of App.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

the Insurance Co. paid the amount insured and took an assignment of the mortgage from the Loan Co., and the plaintiff thereupon instituted proceedings against the insurance company, seeking to redeem the property on payment of what was due over and above the amount of insurance. In the course of the litigation it was shown that the premises instead of being used as a steam binding factory had been converted into a door and sash factory; of which change no notice had been given to the insurance company, although the change materially increased the risk.

Held, (reversing the judgment of the Court below), that the statutory condition as to change of occupation or use of the buildings without notice to the insurance company had been broken, thus invalidating the policy, and that the plaintiff was not entitled to any benefit thereunder.

COCHRANE V. BOUCHER.

Divisional Court, constitution of—Validity of judgment—Appeal.

In moving against a judgment of the Chief Justice, before whom and a jury the action had been tried, the full Court presided. When judgment was pronounced one of the puisne judges was absent, engaged in another court.

Held, that under the J. A. O. sec. 29, subs. 5, the judgment then delivered was invalid, and therefore could not be appealed against, and leave to appeal therefore was refused, but, under the circumstances, without costs.

Beck, for the defendant who moved.

NEILL V. TRAVELLERS INS. CO.

Leave to appeal to Supreme Court—Discretion of judge.

Held, (SPRAGGE, C.J.O., dubitante), that no appeal will lie from the order of a judge granting an extension of time within which to appeal to the Supreme Court. But *per curiam* where an appeal is from the exercise of discretion by the judge, the Court should not review such exercise of discretion.

Osler, Q.C., for the respondent who moved.

G. H. Watson, contra.

ARCHER V. SEVERN.

Will, construction of—Devise to creditor—Satisfaction.

The testator by his will, made in July, 1877, devised to his son G. certain real estate and brewery, expressing that "this devise to be accepted by and to be in full discharge of any and every claim he shall have against my estate at the time of my decease." In a subsequent clause the testator declared that in the event of selling lands specifically devised, the proceeds were to be substituted for the lands by charging the proceeds against the real estate of the testator. The testator was indebted to G. in the sum of \$36,146.86, and on the 8th of October, 1879, the parties met and agreed that the testator should sell the lands in question, including the brewery, to G. for \$27,000, and the brewery plant for \$6,987.20, which was credited on G.'s claim against the testator. G. instituted proceedings against the estate of the testator, seeking to obtain payment of the amount for which the brewery premises and plant were sold, as having been devised to him, he swearing that he was ignorant as to the contents of the will.

Held, (reversing the judgment of the Court below), that the agreement entered into between the father and son superseded the devise to the son.

Bethune, Q.C., for appellant.

S. H. Blake, Q.C., for respondents.

CHANCERY DIVISION.

Ferguson, J.]

[June 6.]

CLARK V. DARVAGH.

Devise—Condition that devise should be forfeited if the infant devisee went and lived with his father.

Devise to executors of real and personal estate of a testator in trust for the benefit of his infant grandson, G. H., "until he arrives at the full age of twenty-one years, at which time I direct my said executors to give to my said grandson the whole of the said property, subject nevertheless to the provisions hereinafter mentioned: . . . Should the said G. H. at any time before coming of age go to live with his