

Held, that the defendant might set-off his bill of costs without having delivered a signed bill one month previous to action, and that as the plea of set-off was confined to the specific sum paid by the plaintiff it was a good plea of set-off, although the count to which it was pleaded might carry special damages.

C. P. LAWRENCE V. WALMSLEY.

Equitable plea—Promissory note—Surety.

To a declaration in a promissory note the defendant pleaded as an equitable plea that he made the note jointly with E., for the accommodation of E., and as his surety; that at the time of making the note, the plaintiff having notice of the premises, agreed in consideration of the defendant's making the said note as surety, to call in and demand payment of the said note from E., within three years; that a memorandum of the agreement was to be endorsed upon the note, which by mistake was not done; that the plaintiff did not demand payment of E. within three years whereby he lost the means of obtaining payment from E., who has since become insolvent.

Held on demurrer that the plea was good, on the ground that the plaintiff had not performed the condition in consideration of which the defendant became surety.

Quare per WILLIAMS, J., whether the averment that the plaintiff thereby lost the means of obtaining payment from E. was material.

B. C. FAWKES V. LAMB.

Principal and agent—Broker—Contract—Evidence—Sale note.

Where a written contract for the sale of goods was silent as to the time for which warehouse-room was allowed by the seller to the buyer, it is competent for either party to show by parol evidence what time is allowed in such a transaction by general custom, but not to show that the parties themselves had agreed by word of mouth that a certain definite time should be allowed.

Plaintiff, a broker, having goods of T. in his possession for sale, contracted with defendant by a sale note delivered by the plaintiff to the defendant to the following effect: "I have this day bought in my own name on your account of T." certain goods, and signed by plaintiff "A. Fawkes, broker."

Held, that T. and not plaintiff was the person entitled to sue.

CHANCERY.

M. R. DILLWYN V. LLEWELYN.

Will—Construction—Tenant for life—Implied gift of inheritance—Acquiescence.

A testator devised his real estate to his wife for life; remainder to his son Lewis for life; remainders over. During his (the testator's) lifetime, his son Lewis requiring a place for his residence, the testator and his wife agreed that he should take possession of estate X, part of such real estates, build a house, and live there. The arrangement was evidenced by a memorandum, signed by the testator and his son Lewis, as follows:—"X., together with my other freehold estates, are left in my will to my dearly beloved wife; but it is her wish, and I hereby join in presenting the same to our son Lewis, for the purpose of furnishing him with a dwelling house." Lewis took possession of X., and expended during the lifetime of his father, and with his knowledge, a large sum, in the erection of a house and buildings thereon.

Held, that the transaction did not amount to a gift to the son of the inheritance in X., but only of the life interest of his mother therein.

V. C. K. WILLIAMS V. THOMAS.

Settlement—Right to follow trust money—After acquired property—Costs—Letter written "without prejudice."

A husband and wife under their marriage settlement are to have the use and enjoyment of all the personal estate of the wife,

together with chattels of the husband during their lives, and of all such personalty as they may become possessed of or entitled to during the coverture. Shortly after the marriage the husband builds houses on land (not his own but adjoining his own) and obtains a lease and builds other houses, stating that they are built with his wife's money and then dies. The wife remains in possession of the property and dies intestate, and the heiress of the husband brings an action of ejectment against the wife's representative, and the tenants to recover possession. An injunction is obtained to restrain the action, the plaintiff, the wife's representative, claiming the houses and lease, and asking by his bill for a conveyance, account, injunction and receiver, the defendant's solicitor offering "without prejudice" to take the money laid out as a charge on the houses.

Held, that the money so laid out is a charge on the houses and leases, and is corpus and not income, and that the offer of the defendant's solicitor may be used against the plaintiff on the question of costs, and inasmuch as the decree is on the same terms as the offer, that the plaintiff must pay the costs.

M. R. JAY V. RICHARDSON.

Vendor and purchaser—Restrictive covenant by lessor binding on purchaser—Building public houses—Notice of sale of reversion—Duty of purchaser to enquire—Perpetual injunction—Time.

The owner of building land demises a plot thereof to A. for a term of forty years for the purposes of the erection of an hotel or inn, and the lease contained a covenant by the lessor that he, his heirs or assigns, would not at any time during the term let any house, building, or land for the erection of an hotel or inn, or for the sale of ale, beer, or spirits, within a quarter of a mile of the plot of ground so leased.

Held, that this restrictive covenant amounted to a covenant to do nothing, so as to suffer any house or building to be used as an hotel or public house within the prescribed distance, and that it was binding on the purchasers with notice, as well as the lessees of other plots of the building land within that distance who claimed under the lessor, and a perpetual injunction was granted to restrain a purchaser from allowing or letting his land during the term of forty years, to be used as an hotel or inn.

A reasonable delay in filing the bill, although it might have been material in the case of an application for an *ex parte* injunction, was held not to have effected the right of the plaintiff to the perpetual injunction prayed by the bill.

APPOINTMENTS TO OFFICE, &c.

CORONERS.

DANIEL CLARKE, Esquire, M.D., to be an Associate Coroner for the County of Oxford.—(Gazetted January 17, 1863.)

JAMES S. CHOOSHANK, Esquire, to be an Associate Coroner for the County of Simcoe.—(Gazetted January 17, 1863.)

MARSHALL BROWN, Esquire, M.D., ALFRED AYERST, Esquire, HENRY TAYLOR, Esquire, GEORGE DENNISON, Esquire, PETER BAXTER, Esquire, WM. H. FRANKLIN, Esquire, JAMES HILL, Esquire, EDMUND GODFREY, Esquire, and BRANWELL WATKINS, Esquire, to be Associate Coroners for the United Counties of Frontenac, Lennox and Addington.—(Gazetted Jan. 24, 1863.)

THOMAS M. ARMSTRONG, Esquire, M.D., to be an Associate Coroner for the County of Simcoe.—(Gazetted January 24, 1863.)

NOTARIES PUBLIC.

JOHN MACBETH CURRIE, of Niagara, Esquire, Attorney-at-Law, to be a Notary Public in Upper Canada.—(Gazetted January 17, 1863.)

CALVIN BROWN, of Toronto, Esquire, Attorney-at-Law, to be a Notary Public in Upper Canada.—(Gazetted January 17, 1863.)

REGISTRAR.

JAMES J. PEARSON, of Lloydstown, Esquire, to be Registrar of the North Riding of the County of York.—(Gazetted January 17, 1863.)

INSPECTORS OF ANATOMY.

DAVID THOMPSON, to be Inspector of Anatomy for the Village of Yorkville.—(Gazetted January 24, 1863.)

TO CORRESPONDENTS.

"CLERK 6TH DIVISION COURT, COUNTY NORFOLK"—Under "Division Courts."
"AN ENQUIRER"—Under "General Correspondence."