

Chan. Div.]

NOTES OF CANADIAN CASES.

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sustained by reason of the breach of the covenants for title. After the case was set down for hearing, S. P. died intestate, and his administratrix obtained an order of revivor which it was now sought to set aside on the ground that the right of action, if any, was not one that survived to the representatives of S. P., or that if it did survive it survived to the real representatives, or to the real and personal representatives jointly.

*Held*, that as to damages which accrued during the lifetime of S. P. his administratrix is entitled to sue for the same; but that the action had nothing to do with damages which might have accrued since that time, for which *semble* the heir or devisee might bring an action, and the motion was therefore dismissed.

In the case of such covenants running with the land where only a formal breach takes place in the life of the ancestor the remedy for damages accruing after his death passes to the heir or devisee; but where not only the breach has taken place but damages had accrued in the lifetime of the ancestor the remedy for these damages passes to the personal representatives.

S. H. Blake, Q.C., for the motion.  
MacLennan, Q.C., contra.

Boyd, C.]

[February 17.]

RE PERCY, STEWART V. PERCY.

*Administration—Arrears of dower—Dower in equity of redemption—Instalment mortgage—Appeal from the master's report.*

This appeal arose out of the administration of the estate of Thomas Percy, who died on February 2nd, 1882. The usual administration order was made with a reference to the Master at Walkerton on February 14th, 1884. It appeared in the Master's office that the only real estate which the deceased died possessed of was a certain hotel property. The Master, in the course of the administration proceedings, sold this on November 13th, 1884. It appeared that this hotel had been purchased by the deceased, subject to a then existing mortgage upon it. The Master, therefore, allowed the widow, Margaret Percy, dower in the surplus only of the purchase money left after discharging the amount of the mortgage. A claim was made, however, by Margaret

Percy for a further sum as arrears of dower. It appeared that she had been in possession of the property from her husband's death by herself, or her tenants, up to the administration proceedings, and she had received certain rents. The master fixed the arrears of dower by taking the amount of rents received plus an occupation rent, fixed by him for a time when the widow was herself in possession, deducted from the amount thus arrived at a certain sum paid for taxes by the widow during that period, and certain other sums paid during that period by the mortgagees for insurance, and he also charged her with a certain sum as interest on the mortgage debt, charging same at ten per cent., and he gave the widow as arrears of dower one third of the balance. It appeared, however, that the mortgage was an instalment mortgage, being payable in instalments composed of principal and interest together. The present appellants contended that the widow should have been charged with one-third of all the instalments which fell due during the period referred to, and also with one-third of the taxes and the insurance money paid upon the property.

*Held*, that the appeal arising in respect of arrears of dower, the husband not having died seized in fee so as to give the widow legal dower, she was not entitled to arrears as of right, but only on the equitable consideration of the Court, which would be exercised in her favour by not requiring her to account for all rents received, and the arrears of dower should be fixed by deducting from the rents received, and the occupation rent fixed by the master, the amounts properly and actually expended by the widow on taxes, insurance, repairs and payments on the mortgage, and then allowing her one-third of the balance for the arrears of dower.

A. H. F. Lefroy, for the appellant.  
N. W. Hoyles, for the respondent.