NOBLE V. CORPORATION OF TORONTO.

Overflow from sewers—Liability of corporations—Negligence—New trial.

Plaintiff was tenant of premises on Queen and Bathurst streets, in Toronto. Plaintiff's drain, which the defendants made at plaintiff's lessor's charge, connected with a main sewer on Queen street, which extended to the west. In this, at Portland street, was a wall, for the purpose, as alleged, of keeping the flow separated and sending it easterly and westerly. There was a drain on Bathurst street, south of Queen, and afterwards, some three or four years before suit, a drain was made on Bathurst street to the north of Queen. A creek was constructed into this, the water being at times some six feet in depth, and several by-streets were drained into the same. Plaintiff's premises were flooded several times within the time before suit above stated, the ground of action being the flooding caused by a continuous rain of from eight to nine hours. It was charged that the sewers had been, in the first place, badly made, and that there was negligence in not repairing, but the mere proof offered was the flooding and the facts before stated, when a verdict was given in his favour, but the Court granted a new trial, ARMOUR, J., *dissentiente.*

Bethune, Q.C., for plaintiff.

McWilliams, contra.

CHANCERY DIVISION.

Boyd, C.] [Feb. 1.

CLEAVER V. NORTH OF SCOTLAND MORTGAGE CO.

Vendor and Purchaser—Possession.

In an action for specific performance it was declared that the plaintiff was entitled to an abatement in the price of the land for non-delivery of possession to her, and because, though the crops had been advertised for sale, it was found that one-half thereof belonged to others to whom the defandants' mortgagors had, with the assent of the defendants, assigned them. It was referred to the Master to take an account of what allowance should be made the plaintiff, and the Master allowed for deterioration in value through neglect and non-cultivation, and charged the defendants with interest on purchase money received up to the time of delivery of possession.

Held, that there was no reason to interfere with his ruling, but that the contract might have been more nearly carried out by allowing interest on unpaid purchase money and charging the defendants with occupation rent for the time they had retained possession after it should have been delivered.

By the conditions of sale it was stipulated that the balance of the purchase money was to be paid one month after sale, and conveyance to be then made, but nothing was said as to delivery of possession.

Held, (1) that the expiration of the month being the time for the completion of the contract the purchaser ought *prima facie* to have been put in possession by the defendants at that time.

(2) That the purchaser was not bound to take possession while any part of the premises was occupied by third parties; and that in a case like the present the *onus* lies on the vendor of showing that the purchaser could safely take possession.

Marsh, for plaintiff.

Moss, Q.C., for defendant.

Proudfoot, J.] [Feb. 8.

DAVIDSON V. OLIVER.

Construction of will — Administration—Accounts.

The testator died in February, 1869, having by his will, amongst other bequests, given certain legacies to be paid in nine and thirteen years, and also devised two lots of land to his sons D. and R. respectively, subject to certain charges; the devisees to be put in possession of their respective lots when the youngest child attained 21, at which time D. and R. were to obtain one-half of the stock and implements then on said lots respectively; the other half thereof to be divided amongst other legatees. Before the youngest child attained majority an administration suit was instituted and in proceeding in the Master's office at Hamilton, that officer directed an account of the stock and implements on the several lots at the time of the reference, and being the proceeds of the old stock left thereon by the testator, and also those subsequently procured from the produce of the said lots, together with an account of the stock