

In this case also the retiring partner was held to be discharged by the giving of time to the continuing partner, and leave was granted to add a plea setting up this defence, if deemed necessary.

*Bruce* (of Hamilton) for the plaintiffs.  
*MacLennan*, Q. C., for the defendants.

### CHANCERY.

Spragge, C.]

[Jan. 12.

GOODERHAM v. THE TORONTO AND NIPISSING R. COMPANY. FOX v. THE SAME COMPANY.

*Receiver—Passing accounts—Unauthorized payments—Allowance of items paid without authority—Costs.*

The Receiver appointed to receive the proceeds of a railway company and apply the same in carrying on the business of the company, paid \$55.97 to the owner of land over which the line ran for the right of way over his lands, he having threatened to obstruct the passage of the company's trains unless paid; on passing his accounts the Master refused to allow the payment in favor of the Receiver, which ruling of the Master was affirmed on appeal, as such payment did not properly come under the head of "outgoings" for the road, and which alone the Receiver was authorized to pay; but the court (SPRAGGE, C.) gave the Receiver liberty to take out an order now for the allowance of this disbursement on payment of the costs of the appeal—but refused to make such an order in respect of fees paid to the Solicitor of the company for the examination of titles, as there was not any evidence to show that the payment was such as would have been sanctioned by the court if applied to in the first instance for permission to pay the same.

Spragge, C.]

[Jan. 12.

HALLERAN v. MOAN.

*Statute of frauds—Promise not to be performed within a year—Executed consideration.*

The Court will enforce a verbal agreement, although it is to do an act which is not to be performed within a year from the time making the agreement where the consideration therefor has been executed.

Proudfoot, V. C.]

[Jan. 19.

TYRWHITT v. DEWSON.

*Will—Construction of—Legacy on termination of life estate.*

By his will and codicil a testator devised to his son J. on the death of his mother, certain land in consideration for which he was to pay the sum of £150 to the executors in four years. In the event of his dying without heirs the land was to be sold and the amount received therefor over and above £150 "to be equally divided amongst my surviving children."

*Held*, (1) that J. took a fee tail in remainder after an implied life estate in favor of the mother as the "dying, without heirs" must be taken to mean heirs of the body, not heirs general, he having brothers and sisters still living:

J. died during the lifetime of his mother.

*Held*, (2) that the period of division should be the death of the tenant for life, and the survivors at the time of such death were to take the whole amount realized by the sale of the lands upon which, however, the £150 was to form a charge.

Proudfoot, V. C.]

[Jan. 19.

WOOD v. HURL.

*Construction of Statutes—Grouping clauses in Acts—Head lines—R. S. O. cap. 49, s.s. 10 & 11.*

*Held*, following *Eastern Counties &c., R. Co. v. Marriage*, 9 H. L. Cases 32; *Long v. Kerr*, L. R. 3 App. Cas. 529; and *Van Norman v. Grant*, 27 Gr. 498, that both sections 10 and 11 R. S. O. cap. 49, are to be governed by the head-line immediately preceding section 10; and so where the interest sought to be reached by the creditor has not been concealed by a fraudulent conveyance, the judge has not any authority to give summary relief thereunder; and an order made by the referee for the sale in a summary manner of the interest of two of four tenants in common was reversed.

*Crown v. Chamberlain*, 27 Gr. 551 followed: *Donovan v. Bacon* 16 Gr. 472 n. doubted.