

friend, and an enlargement for a week was granted for her to have one appointed. As this was not done within the time allowed, a further peremptory enlargement of three days was granted. On the day that the petition finally came on for hearing, counsel for the petitioner filed the consent of B. to be appointed next friend, and asked to have him appointed *ex parte*; but the Judge would only grant a summons, and he afterwards, that day in Chambers, dismissed the petition. The petitioner applied to the Full Court to have the order dismissing the petition set aside, or varied by granting leave to file a new petition.

Held, that, as it did not clearly appear on the face of the petition that the property in question was the separate property of the caveator, it was necessary for her to have a next friend appointed.

Held, also, that the Judge in Chambers, having all the circumstances before him, had exercised his discretion in dismissing the petition, and the Court should not interfere.

Held, also, that nothing had been shown to warrant a positive order granting leave to file a new petition.

Per DUBUC, J. The petition was not dismissed on the merits, and the caveator may file a new one without special leave. *Schultz v. Frank* 345

6. *Petition—Staying proceedings until costs of former suit in Queen's Bench paid—Laches.*—The Court has no jurisdiction to stay proceedings on a petition filed to enforce a caveat under the Real Property Act, because the costs of an action

or suit in the Court of Queen's Bench relating to the same matter have not been paid.

Where a petition to enforce a caveat under the Real Property Act alleged that the land had been conveyed years before, but claimed a lien for unpaid purchase money,

Held, that until The Statute of Limitations barred the claim, delay in enforcing it could not be made a ground for the Court refusing relief. *Graham v. Hamilton* 443

7. *Petition—Dismissal for want of prosecution — Rule 16 modifies Rule 13—Husband and wife—Married woman — Separate estate.*—G. filed a petition to enforce a caveat under the Real Property Act, but did not serve the petition within the time prescribed by rule 13 of said Act. A motion was made to dismiss the petition for want of prosecution.

Held, that there could not be a dismissal in the first instance, that rule 16 modifies rule 13, and that the only order that could be made was one giving time to serve.

The caveatee was a married woman, and it was held that the facts set out in her affidavit were insufficient to shew that the land in question was her separate estate. *Graham v. Hamilton* 459

8. *Tax sale deed—Issue—Who should be plaintiff—Onus of proof.*—In a petition under The Real Property Act, the petitioner alleged that he had a title in fee simple to the lands in question. The caveatee claimed under a tax sale deed, but did not distinctly negative the petitioner's title, except as a consequence of the tax sale.

Held, that the *onus* of establish