

gagees made parties ; but the rights of such mortgagees could not be affected thereby.

Aylesworth, Q.C., and Cline, for Company. Leitch, Q.C., and E. D. Armour, for town. Bruce, Q.C., for certain mortgagees.

Street, J.]

GIVENS v. COUSINS.

[April 2.

Vendor and purchaser—Security for payment of purchase money—Portion of purchase money realized under security—Judgment recovered against purchasers for balance—Agreement—Right to rescind.

Where a vendor under a contract for sale, sold certain lands to a purchaser, who, on the day named for payment of the purchase money, paid a portion thereof, giving security for the payment of the balance at a later date, when, having failed then to make payment, the vendor realized on the security, which, however, left a balance still due, for which the vendor recovered judgment against the purchaser on his promise to pay under the contract, and afterwards notified the purchaser that unless the amount was paid by a day his right under the contract and his interest in the land would be forfeited, time being declared to be the essence thereof.

Held, that the recovery of the judgment did not affect the right of the vendor to terminate the contract, nor was it a condition precedent to cancellation that the plaintiffs should return the payments they had received.

John Greer, for plaintiffs. W. H. Blake, for defendant.

MacMahon, J.]

WELLER v. CARNEW.

[April 2.

Landlord and tenant—Lease—Habendum for one year—Subsequent clause for notice to terminate—Repugnance.

In a lease with habendum for a year, there was inserted, after the covenant for quiet enjoyment, a clause that it was agreed that either party might terminate the lease at the end of the year, on giving three months' notice prior thereto.

Held, that the clause was repugnant to the habendum, and must be rejected, and that the lease terminated at the end of the year without any notice.

Northrop, for plaintiff. E. Gus Porter, for defendant.

Armour, C.J., Falconbridge J.,
Street, J. }

CUNNINGTON v. PETERSON.

[April 5.

Bills of exchange and promissory notes—Addition of maker's name—Alteration not apparent—Holder in due course—Bills of Exchange Act, 1890—58 Vict., c. 33, sec. 63 (D).

In an action on a promissory note signed by several parties it was shown that the name of one of the alleged makers was not signed by him or with his authority, but was added to the note after others had signed it, although before the note came to the hands of the plaintiff, a holder for value,