

MARKET—Continued.

public landing, street and square for the court and market house, and for no other purpose whatever. By section 4 of the Act it was provided that nothing therein should in anyway affect public rights. In 1898 the defendants sought to erect on the land public weigh-scales to be used in connection with the market. A suit for an injunction having been instituted by the plaintiffs to restrain the defendants from proceeding with the erection of the scales. *Held*, that the Crown grant to the defendants contained an implied authority to the defendants to erect upon the land structures necessary or reasonably convenient or useful for the purposes of the market, including weigh-scales, and that this authority was not taken away by Act 20 Vict. c. 17. *CITY OF FREDERICTON v. MUNICIPALITY OF YORK*356

MARRIED WOMAN—Partition suit—
 Joinder of wife302
See PARTITION, 2.

—Separate property—Wife living apart from husband164
See HUSBAND AND WIFE.

—Suit by, as administratrix—Joinder of husband335
See LEGACY.

—Widow—Breach of trust by husband—Following proceeds of trust estate—Charging real estate..72
See PARTIES, 3.

MARRIED WOMEN'S PROPERTY ACT, 1895 — Retrospective operation of335
See LEGACY.

MISDIRECTION—New trial346
See NEW TRIAL.

MISTAKE—Deed—Rectification—Costs
 —Bill for Rectification and Foreclosure of Mortgage—Competing Purchasers—Priorities.] Rectification decreed of misdescription in conveyance of land arising from mutual mistake of grantor and grantee, as against a subsequent purchaser with notice of mistake, but without costs. Bill sustained for the rectification of a mortgage, and for the foreclosure and sale of the mortgaged premises. A purchaser of a lot of land taking under a conveyance describing by mistake of grantor and grantee a different lot, has merely an equitable right to

MISTAKE—Continued.

have the conveyance rectified as distinguished from an equitable estate, and the maxim "*qui prior est tempore potior est jure*" has no application as against a subsequent purchaser for value without notice. *KING v. KEITH*538

2. — *Misdescription—Rectification—Evidence.*] Though in order to secure the rectification of an instrument the clearest evidence is required to be adduced, yet, if one of the parties to it denies that there is any mistake, the Court will consider all the circumstances surrounding the making of the instrument, and whether it accords with what would reasonably and probably have been the agreement between the parties, and, if satisfied beyond reasonable doubt that the instrument does not embody the true agreement between the parties, will rectify it. *DOUGLAS v. SANSOM*122

—Sale—Shares—Absolute transfer—Evidence to modify terms of sale181
See MORTGAGE, 12.

MORTGAGE—Foreclosure suit—Foreclosure and Sale—Title of Mortgagor in Dispute.] A mortgagor will be foreclosed though he may have had no interest in the premises to mortgage, but, in such an instance, a sale will not be ordered. It is not desirable, where any substantial question is suggested as to the title which a purchaser might get under a sale made in pursuance of a decree of the Court, to order one. *DOHERTY v. HOGAN*113

2. — *Foreclosure Suit—Offer to Suffer Judgment by Default—Offer made by One of Several Defendants—The Supreme Court in Equity Act, 1896 (53 Vict. c. 4), s. 130—C. 37, C. S. N. B. ss. 127, 128.*] An offer to suffer judgment by default, under Act 53 Vict. c. 4, s. 130, is not applicable to a suit for the foreclosure of a mortgage and sale of the mortgaged premises. One of several defendants cannot offer to suffer judgment by default. *JEFFRIES v. BLAIR*420

3. — *Interest—Covenant by Assignee of Equity of Redemption to Pay Principal and Interest at 7 Per Cent.—Judgment—Merger—Practice—Foreclosure Suit—Appearance—Motion to take Bill Pro Confesso—Subsequent Motion to Assess Damages.*] The assignee of the equity of