of notes for the balance of the price, and that the title to the machinery should remain in the company till the purchase money, etc., was paid, and that on default the company should remove and resell it. Certain amounts were paid and judgment was obtained by the company for the balance due on the notes, and part realized by execution when the company took possession and resold, and then sought to prove a claim against the defendants for the balance unpaid. On an appeal from the Master who allowed the claim, it was

Held, (reversing the Master in Ordinary) and following *Sawyer* v. *Pringle*, 18 A.R. 218, that as the contract did not provide that the purchase money was to be applied *pro tanto* on what was due and that the purchasers were to remain liable for the difference, no action for any part of the price could be maintained after the vendors had taken possession and resold the machinery. The election to sell was an election to abandon the contract by the vendors, whereupon the vendees acquired a clear right to abandon it also.

Held, also, that the whole matter was examinable in the Master's office though judgment be recovered, and as the consideration for the judgment had disappeared by the intentional act of the vendors they could not collect the amount of it.

Bristol for the appeal.

Hoyles, Q.C., *contra*.

[Nov. 25.

LEYS *v.* THE TORONTO GENERAL TRUSTS CO.

Will—Devise—Dower—Election.

A testator having by his will blended his real and personal estate into a fund from which to obtain an income out of which payments were to be made annually to his wife and other devisees, and postponed the division of the *corpus* until after the death of the wife—the wife also getting the use of a house,

Held, that the wife was not bound to elect between her dower and the testamentary bestowments, *Re Quimby*, *Quimby* v. *Quimby*, 5 O.R. 744, distinguished.

The testator also gave a house for the residence of certain nephews and nieces until the youngest attained twenty-one.

Held, that this right of personal occupation was, while it lasted, inconsistent with a claim of the widow to have one-third of the house set apart for her use as doweress, and that the deprivation of dower for a time in part of the real estate was not sufficient to put her to her election as to the residue of the land.

Semble, if the whole real property were to pass by one devise, the exclusion of dower in any part would be sufficient to indicate its exclusion in the whole; but in the case of separate devises, though the wife may be barred of her dower in one property, she is not therefore barred in the other. *Cowan* v. *Besserer*, 5 O.R. 624, followed.

Held, also, that the widow was bound to elect in the case of a house the occupation of which was given to her for her life, and as to the house the occupation of which was given to the nephews and nieces, but otherwise she had dower in the land.

Wallace Nesbitt for the plaintiff.

A. Hoskin, Q.C., for the defendant.