

Chan.]

NOTES OF CASES.

[Chan. Ch.]

cleared and fenced," on the faith of which the plaintiff purchased; when in fact there was not any clearing, neither was there any fencing made upon the premises. The Court [BLAKE, V. C.] in pronouncing a decree for specific performance at the instance of the purchaser, directed a reference to the master to make an allowance in respect of the matters misrepresented, and ordered the vendor to pay the costs of the suit.

that the plaintiff's right to call for a conveyance was barred by the statute of limitations; but the defendant having denied the agreement to convey, which, however, the evidence clearly established, the court [BLAKE, V. C.] on dismissing the bill, refused to give the defendant his costs.

CHANCERY CHAMBERS.

Blake V. C.]

[Feb. 7.

Referee,]

Proudfoot, V. C.]

[Dec., 1880.

MORRIS V. MEADOWS

ELLIOTT V. GARDNER.

Mortgages—Sale of lands subject to mortgage—Right to call on purchaser to pay off mortgages.

Dismissing bill for want of prosecution.

M. sold a lot of land to C. which was subject to a mortgage for \$1600, which C. agreed to pay off, this being in reality the consideration for the conveyance. C. having died his representatives sold the land to a *bona fide* purchaser who covenanted to pay off the \$1600 mortgage, and default having been made in payment the mortgage premises were sold to the plaintiff who received a conveyance and therefore instituted proceedings against C's. representatives to compel payment of the mortgage debt of \$1600. A demurrer for want of equity was allowed, the demand, which was a personal one, against the representatives of C. remaining with M. the original vendor.

In a suit to set aside a conveyance of the equity of redemption in certain lands as fraudulent against creditors, one sitting of the Court having been lost, a defendant, the grantee of the equity of redemption, moved to dismiss the bill for want of prosecution. More than two weeks before the sittings commenced the plaintiff's solicitors were notified to file replication and proceed to a hearing, but did not do so. The excuses offered by the plaintiff were that the defendant was a material witness, and was absent prior to the hearing, and that the property had been sold under a power of sale contained in one of the mortgages, and little or no surplus remained after paying the mortgages. It appeared that no efforts had been made to find the defendant in order to subpoena him as a witness at the hearing, and that the sale of the land did not take place until a month after the sittings at which the cause might have been heard.

Blake, V. C.]

[Feb. 7.

FERGUSON V. FERGUSON.

Constructive trustee—Statute of limitations—Costs.

The defendant, in consideration that his father would convey to him certain lands in the township of Caledon, undertook and agreed to convey to a younger brother 100 acres of land in the township of Artemesia. The father conveyed the land to the defendant, but instead of his conveying to the brother as he had agreed, he sold the property more than twelve years before bill filed, the plaintiff being then at least twenty-one years of age.

Held, that under these circumstances the defendant was merely a constructive trustee, and

Held, that the delay was not excused, and the bill should be dismissed.

Held, also, that failure of the defendant to comply with an order to produce did not under the circumstances of the case deprive him of the right to move to dismiss. *Semble* that a plaintiff cannot in answer to a motion to dismiss, ask to have the bill dismissed without costs, but must make a substantive motion for that purpose.

Langton, for defendant, (appellant.)

Hoyle, for plaintiff, (respondent.)