

conveyance being by the ordinary short form deed, the only reference to the mortgage being in the covenant for quiet enjoyment, was, under the circumstances, held to have been a sale subject to the mortgage, against which the vendor was entitled by the purchaser to be indemnified; and the plaintiff having acquired an assignment of such right of indemnity he was entitled to enforce it against the purchasers. Before the commencement of an action against the purchasers, one of them died and on the plaintiff notifying the administrator of his claim, he was served with a notice, under section 35 of R.S.O., ch. 139, disputing it. An action was afterwards brought against such administrator, but, on it appearing that he was then dead, and that an administrator de bonis non had been appointed to such administrator, an order was obtained amending the writ by substituting as defendant such administrator de bonis non, upon whom the writ was served, such service being some six months after the service of the notice.

Held, that the proceedings against the defendant must be deemed to have commenced only on the service of the writ on him, and this being more than six months after the service of the notice, the plaintiff's action was barred.

Wallace Nesbitt, for plaintiff. *Bell*, for defendant, John Moore. *Pepler, Q.C.*, and *J. McCarthy*, for defendant, Tingate.

Robertson, J.]

SNIDER v. MCKELVIE.

[July 14.

Medical practitioner—Agreement not to practice—Breach of—Right to damages and injunction.

By an agreement under seal, the defendant, a physician and surgeon sold his medical practice in a village, with the good will thereof, to the plaintiff for \$2100, and bound himself in the sum of \$400 to be paid to the plaintiff in case he should set up or locate himself within the space of five years within a radius of five miles of the village.

Held, the plaintiff was entitled to damages for breach of the agreement and an injunction restraining him from further breaches.

W. M. Sinclair, for plaintiff. *Garrow, Q.C.*, for defendant.

Divisional Court]

WATSON v. HARRIS.

[July 14.

Patent of invention—Subsequent patent—Improvement on first patent—Assignee of first patent—Rights of.

The defendant and another who had acquired a half interest in a patent for making fuel from garbage, etc., assigned to the plaintiff one third interest therein and all improvements and amendments thereto, it being also contemplated that the invention could and would be utilized for making gas. The defendant subsequently procured a patent for making