

Chan. Div.]

NOTES OF CANADIAN CASES.

[Prac.]

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE
LAW SOCIETY.

CHANCERY DIVISION.

Ferguson, J.]

[June 8.]

SMART V. SORENSON.

Dower Act of 1879—Dower in equity of redemption—Husband aliening.

On February 21st, 1884, the plaintiff recovered a judgment against C. S. in the suit of *Sorenson v. Smart*, reported 5 O. R. 678, for his costs, and the same were taxed at \$315, and writs of *fi. fa.* placed in the hands of the sheriff of Essex on March 20th, 1884, but the sheriff could make nothing. At the date of the judgment C. S. owned certain lands, subject to a mortgage dated December 2nd, 1881, to one J. A., in which M. S., the wife of C. S., joined and barred her dower. On February 26th, 1884, five days after the above judgment, the lands were sold to C. for \$2,250, and on same day they were conveyed by deed to C., and M. S. joined and barred her dower. C. and C. S. went to the sheriff of Essex and paid several *fi. fas.*, leaving a balance of \$350 due C. S. on the sale of the lands, which C. was to secure by mortgage. On March 14th, 1884, C. executed the mortgage, which was made to M. S. as mortgagee. The plaintiff now bringing this action against C. S., M. S. and C., and claiming that M. S. held the mortgage merely as trustee for her husband, and the defendants alleging that M. S. had dower in the lands, and had refused to join in the deed to C. without getting the mortgage in her name, and thus had given valuable consideration therefor.

Held, that *Henry v. Pringle*, 26 Gr. 68, and *Black v. Fountain*, 23 Gr. 174, are still good law, and a wife only has dower in an equity of redemption where the husband dies seized, and the latter may defeat the right by alienation, and the Dower Act of 1879 does not affect the case of the husband not dying seized of the equity of redemption, and that therefore M. S.

gave no valuable consideration for having the mortgage made to her, and must be declared trustee for her husband.

A. O. Jeffery, for the plaintiff.

PRACTICE.

Chan. Div.]

[Sept. 3.]

MORTON V. HAMILTON PROVIDENT AND
LOAN SOCIETY.

Mortgage—Sale under power—Surplus—Account as to—Scale of costs—R. 515, O. J. A.

The order of PROUDFOOT, J., of the 22nd April, 1885 (10 P. R. 636, ante p. 179), was affirmed by the Division Court.

Muir, for the appeal.

Watson, contra.

Chan. Div.]

[Sept. 3.]

MASSE V. MASSE.

Action in Chancery Division—Jury notice—Transferring action.

The order of BOYD, C., of the 20th April, 1885 (10 P. R. 574, ante p. 179), was reversed by the Divisional Court, following *Pawson v. Merchants' Bank*, decided in the Court of Appeal on the 12th May, 1885.

W. H. P. Clement, for the appeal.

J. C. Hamilton, contra.

Ferguson, J.]

[Sept. 8.]

HILL V. THE NORTHERN PACIFIC JUNCTION
RAILWAY CO.

Single Judge—Power to review findings of referee—Sections 48 and 49 O. J. A.

Held, notwithstanding the language of sec. 50, O. J. A., a single judge, sitting as the Court, has power to review the findings of an official referee upon a reference under sec. 48, O. J. A.

Boulton, Q.C., for the defendants.

J. C. Hamilton, for the plaintiff.