From Proudfoot, V. C.] [June 2.

McLean v. Caldwell.

Interlocutory injunction—Irremediable injury—Balance of convenience.

The bill was filed by the plaintiff for the purpose of having it declared that he was entitled to the user of certain streams where they flowed through his lands, as well as to the improvements which he had constructed thereon, and to restrain the defendants from using these improvements in floating down their logs.

Proudfoot, V. C., granted an interlocutory injunction restraining the defendants from using the improvements until the hearing, on the plaintiff's giving the usual undertaking to pay damage in case the Court should be of opinion that the defendants sustained any injury by reason of the order.

Upon appeal the Court of Appeal reversed this order of the Vice Chancellor, on the ground that it was not shewn that irremediable damage would be caused the plaintiff by not granting the injunction, nor that the balance of inconvenience preponderated in his favour.

Bethune, Q. C., & *C. Moss*, for the appellants.

Blake, Q. C., & *Creelman* for the respondents.

Appeal allowed.

From Q. B.] [June 30

Backus v. Smith.

Lateral support—Easement.

The house which the plaintiff occupied as tenant to S., fell two days after the defendant H. had excavated the adjoining lands, which he owned, to within a few feet of his line, close to which the house stood and the plaintiff sued to recover damages for injury to his business. The house in question was built by S. in 1854 upon planks laid about one foot under the ground, so that he could remove it at the end of the ten years' lease which he held. S., however, afterwards acquired the fee and before the expiration of the twenty years, in 1871, he became the owner of the defendant's lot for about a year, when he conveyed it to H. There was no evidence that H. knew that the house was receiving more support from his land than it would have required if it had been constructed in the ordinary way, or that the excavation would have damaged the plaintiff's land unweighted by the house.

Held, that there had been no such user of the servient tenement as to justify the presumption that an easement had been acquired by grant, nor had there been twenty years possession of the support as an easement owing to the unity of seisin of S.

Held, also, reversing the judgment of the Queen's Bench, that as the plaintiff had no right to support the defendant's land, and as the only evidence of negligence was that the defendant excavated to within a few inches of his line the plaintiff could not recover.

Robinson, Q. C., for the appellant.

Boyd, Q. C., and *C. R. Atkinson*, for respondent.

Appeal allowed.

CHANCERY.

Proudfoot, V.C.] [July 28.

Givins v. Darvill.

Will, construction of—Life estate—Vendor and Purchaser's Act.

A testatrix devised all her estate to trustees, and directed that part should be retained as a residence for her two younger daughters until they should marry, when the property was to be sold and the proceeds added to and form part of all the residue of her estate to be equally divided amongst all her "children—sons and daughters—share and share alike, then living." The two daughters attained majority and remained unmarried, when a contract was entered into by all the children of the testatrix and the trustees of the estate with the defendant for the sale of the property so directed to be retained.

Held, that the two daughters had, under the devise a perfect right on attaining 21 to dispose of their estates for life and while unmarried, and that all the children, in-