

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

## CHANCERY DIVISION.

Full Court.]

[March 21.]

CAMERON V. CARTER.

*Purchase by instalments—Outstanding mortgage  
—Rights of purchaser.*

Cain agreed to sell certain lands to Carter for \$1,400, payable in yearly instalments of \$100 each, with interest, and he covenanted that on payment of the said sum of money he would convey the said lands to Carter by a good and sufficient deed in fee simple.

There was at the time of this agreement a mortgage on the property still in force, but of which the principal money would be payable off long before the last instalment of the purchase money would be due under the agreement.

Some of the instalments being unpaid, Cameron & Campbell, to whom Cain had assigned the agreement, sued Carter for the amount. Carter defended on the ground that he was entitled either to have the mortgage paid off or to be secured against it, before he could be forced to pay the instalments of purchase money.

*Held*, that the plaintiffs were bound to ensure the defendant in making the intermediate payments that he, the defendant, would have a good title, clear of incumbrances, when the period of completion of the contract had arrived. They were not justified in seeking to enforce payment of all the instalments, leaving a merely personal remedy for the defendant in case the plaintiffs should not be in a position so to convey. When the price is payable by instalments the purchaser has a right to have a reference as to title, and to have title manifested before he makes a single payment.

*Gamble v. Gumpferston*, 9 Gr. 199, approved of.

H. J. Scott, Q.C., for the defendant (appellant).

A. H. F. Lefroy, for the plaintiffs.

Ferguson, J.]

[March 29.]

LESLIE V. CALVIN ET AL.

*Patent—Action against executors for infringement  
—Profits to estate—Actio personalis cum per-  
sone movetur.*

The plaintiff sued the executors of D. D. C., claiming an account from them of all benefit accrued to the estate of D. D. C., by reason of certain alleged infringements by him of a certain patent of the plaintiff, being a patent for a Withe Crushing Machine, which patented machine D. D. C. was alleged to have caused to be made for his own use, and to have used. The defendants demurred to the claim so far as it sought for damages suffered prior to the death of D. D. C.

It appeared clearly from the statement of claim that the real meaning of it was that the benefit which accrued to D. D. C. from his alleged infringement was simply the saving of expense to him by the use of the machine in question, and the demurrer was argued in this view.

*Held*, that, this being so, *Philips v. Humfrey*, 24 Ch. D. 439, was a binding authority in favour of the demurrer, which must therefore be allowed.

*Semble*, that if the statement of claim could be read to mean that by reason of the wrongful act, property of a tangible character passed from the plaintiff's estate to that of the deceased—that the deceased, by the wrongful act, put into his estate some value or property other than and different from the saving of expense by the use of the machine, the conclusion might be quite different.

*Marsh*, for the plaintiff.

*Clement*, for the defendants.

Ferguson, J.]

[March —.]

GRANT ET AL. V. LA BANQUE NATIONALE:

*Banks and banking—Pledge of timber limits to bank—Additional security—Quebec regulations as to timber on Crown Lands—34 Vict. c. 5, D., secs. 40, 41.*

*Held*, that sec. 28 of the revised regulations respecting the sale and management of the timber on Crown Lands in the Province of Quebec, which provides that lien holders "in