

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

in educating and bringing up my children; and one-third to be laid out in wild lands to be equally divided amongst my children. But if my said wife should not think proper to sell my said estate, then the same shall be divided amongst my children, their heirs or assigns, after the death of my said wife, share and share alike."

He then nominated P. his executor, "with full power and authority to act in the same," who took out Probate of the will.

The testator died Dec. 12th, 1838, leaving H., his wife, and three children surviving him. Afterwards H. executed a power of attorney, appointing W. J. her attorney to make sale of and convey the said lands so devised as above mentioned, and on February 7th, 1846, H., by deed of that date purported to convey, in consideration of \$250, the lands in question to P., the executor aforesaid. The words of grant being "remise, release, relinquish and quit claim," *habendum* to P., his heirs and assigns. Under this deed P. obtained and remained in possession of the land until his death, on March 30th, 1882, when he devised it to K. and K. in trust for the purposes of his will of which he appointed K. and K. his executors.

H. died on November 22nd, 1872, and this action was brought on November 6th, 1883.

It was conceded that the title of the children of J. was barred by the Statute of Limitations unless P. could be treated as an express trustee under sec. 30 of R. S. O., c. 108.

Held, affirming the decision of Osler, J. A., that the proper construction to be placed on the will was that a life estate was given to the testator's widow with a power of sale to the executors during her lifetime with her consent, and remainder in fee to the children in the event of the non-execution of the power. Unless and until the consent of the widow was given, the power of sale did not exist and the executor had no duty to perform in relation to the lands, and he did not take, nor was it necessary that he should take, the legal estate. As he never was required to execute the power he never became trustee, and the plaintiff's title was barred by the Statute of Limitations.

Per PROUDFOOT, J.—There was no devise of the estate to the trustee. The implied estate to enable him to fulfil the trust would only arise when the trust did. Meantime the estate de-

scended to the heirs, and as the trust never arose the trustee never had any estate under the will.

B. B. Osler, Q.C., and T. S. Plumb, for the plaintiff.

W. Cassels, Q.C., for the defendant executors.

Proudfoot, J.]

[September 17.]

CASNER V HAIGHT.

Redemption by wife of a mortgagor after she had joined in the mortgage, and after foreclosure against the husband by the mortgagee, but during her husband's lifetime—Demurrer.

Plaintiff being the wife of A. W. C., who mortgaged his lands, she joining therein for the purpose of barring dower (after foreclosure by the mortgagee against the husband, but during the husband's lifetime), brought an action to be allowed in to redeem the mortgaged premises.

A demurrer to the plaintiff's statement of claim on the ground that the plaintiff had no right, title, or interest in the lands, and that her pleadings affirmed that her husband's interest had been foreclosed, was allowed with costs.

Moss, Q. C., for the demurrer.

V. McKenzie, Q. C., contra.

LITTELL'S LIVING AGE. The number of *The Living Age* for 23rd and 30th August, contains The three Poems "In Memoriam," *Quarterly*; Italian University Life in the Middle Ages, *British Quarterly*; A Legend of Vanished Waters, *Scottish*; Untrodden Italy—The Sila Forest, *Contemporary*; The English Church on the Continent, *Fortnightly*; Venice, *Blackwood*; Three Days among the Dutchmen, *Tinsley's*; Madame de Krudener, *Gentleman's*; William the Silent, *Times*; "John Bull et Son Ille," in the Seventeenth Century, and The Business of Pleasure, *Spectator*; Slips of the Tongue and Pen, and Manx Smuggling, *All the Year Round*; with the conclusion of "The Baby's Grandmother," instalments of "Mitchelhurst Place," "Peter Mackey's Three Sweethearts," "Beauty and the Beast," and "Tzigge," and poetry.

For fifty-two numbers of sixty-four large pages each (or more than 3,300 pages a year) the subscription price (\$8) is low; while for \$10.50 the publishers offer to send any one of the American \$4.00 monthlies or weeklies with *The Living Age* for a year, both postpaid. Little & Co., Boston, are the publishers.