

Held, also, that the legacy to S. S. was not a vested one, and should he die before he reached twenty-five years of age the devisees over and not his estate would be entitled.

Cases discussed—*In re Hodges' Legacy*, 16 Eq. 92; *Davis v. Angel*, 4 De G. F. & J. 524; *Simpson v. Vickers*, 14 Vesey 341; *Davis v. Thomas*, 1 Russ. & N. 506.

W. B. A. Ritchie, Q.C., for executors. *H. McInnes* for creditors of Frederick Scotney. *W. R. M. Hauten* for legatee S. S. *J. F. Frame* for devisees over.

Full Court]

BARROWMAN 7, FADER.

[May 8.

Taxation of costs—Notice—Time for giving—O. 63, R. 13.

Under O. 63, R. 13, before taxing costs, the party taxing is required to give one day's notice to the opposite party. Under O. 63, R. 13, before taxing costs accruing in Halifax, "one day's notice . . . shall be given by the solicitor of the party whose costs are to be taxed to the other party or his solicitor, etc."

Held, that the words "one day" are not to be read as meaning "one clear day," and

Semble, that notice given at any time up to seven o'clock of the evening of the day before the day for which the notice is given would be sufficient

A. Whitman for plaintiff. *C. P. Fullerton* for defendant.

Province of Manitoba.

QUEEN'S BENCH.

Dubuc, J.]

DAY 7, RUTLEDGE.

[March 11

Tax sales—Mortgagor and mortgagee—Mortgagor's wife cannot cut out mortgage by buying at the tax sale—Assignee of tax purchaser acquires no better title than assignor.

The defendant and his wife (to bar her dower) executed a mortgage of his farm to plaintiff to secure \$3,000. In May, 1893, the farm was sold for arrears of taxes amounting to \$48, and purchased by Mrs. Rutledge in her own name, and the tax sale certificate was handed to her. In the summer of the same year in response to a letter from Mrs. Rutledge, a brother of the plaintiff came from Ontario to see the Rutledges about it, and stayed about two weeks at their house. At this time a new mortgage was executed by Rutledge and his wife (to bar her dower as before) in favor of the plaintiff, as a substitute for the former one, but no mention was made to the plaintiff's brother of the tax sale which had been made; and the judge found as a fact that Rutledge and his wife had formed a scheme to defraud the plaintiff and get title to the farm free from the mortgage. In December of the same year the tax sale certificate was assigned to a person who had advanced the money to enable Mrs. Rut-