

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div

relatives as my executors may think advisable, after paying them a fair remuneration for their time and expenses."

The plaintiffs claimed to have the clause in the will devising lot 14 "reformed," so as to express the alleged true intention of the testator, and made to read as a devise giving to the plaintiff J. S. the E. $\frac{1}{2}$, and to the plaintiff W. S. the W. $\frac{1}{2}$ of lot 21 in the 14th concession; or that the residuary clause might be construed to vest any undisposed of property absolutely in the executors, and that they might be authorized to convey lot 21 to the plaintiffs in equal proportions.

Held, that the plaintiffs were not entitled to either relief prayed.

Held also, that evidence of the testator's intention was not admissible.

Ferguson, J.]

[Dec. 9.

MCCLUNG V. MCCracken.

Specific performance—Contract by agent in his own name—Undisclosed principal—Husband and wife—Statute of frauds, sect. 4.

A husband offered his wife's land in exchange, in a letter addressed to the plaintiff's agents, in the following terms:—"I have had an examination made of the buildings on King street and regret it is of a very unfavourable character. The buildings were, I learn, once condemned, and had to be rebuilt; the tenants have always been of migratory character, never remaining long in them. Under these circumstances I do not feel disposed to entertain Mr. McClung's present offer. If he will assume my mortgage amounting to \$11,200, and pay me in cash \$3,750, I will assume his mortgage of \$5,000 on the easehold. This offer to remain open till to-morrow. I remain, yours truly,

Thomas McCracken.

Messrs. Pearson Bros.

Or I will sell him my south houses for \$11,500, \$6,000 cash, balance on mortgage to suit his convenience."

The plaintiff accepted the offer in the following terms:—

"— McCracken, Esquire,

"Your offer of this date for the exchange of my property on King street for your property on

St. George street, I will accept on your terms. Yours respectfully, Jno. McClung."

Held, that this was not sufficient contract in writing under the Statute of Frauds as against the wife.

The wife subsequently signed a conveyance of the land to the plaintiff, but the conveyance contained no recital of the alleged contract, was never delivered, and was produced at the trial from her custody.

Held, that the conveyance, under the circumstances, was an unfinished act, and could not be relied on by the plaintiff in support of the alleged contract of which specific performance was sought.

J. E. Rose, Q.C., and J. H. Macdonald, for plaintiff.

Jas. MacLennan, Q.C., and Drayton, for defendants.

Full Court.]

[Dec. 7.

BEATY V. BRYCE.

Appeal to Court of Appeal—Leave to appeal—O. J. A. ss. 33, 34.

When the amount involved in an interpleader issue was under \$500, but it was alleged that the decision of the Divisional Court desired to be appealed from affected the right to other property amounting to \$2,000.

Held, that this was not a sufficient ground for granting leave to appeal.

Full Court.]

[Dec. 7.

O'DONOHUE V. WHITTY.

Appeal to Court of Appeal—Leave to appeal—O. J. A. sects. 33, 34.

Where the construction of a statute is involved in a judgment sought to be appealed from,

Held, leave to appeal to the Court of Appeal should be granted although the amount involved be less than \$200.