

Chan]

NOTES OF CASES.

[Chan

Spragge C.]

[Feb. 2]

HOLTBY V. WILKINSON.

Will, construction of—Vested remainder—Falsa demonstratio.

A testator devised certain real estate "to be owned, possessed, and inherited by my wife during her natural life subject to the further provisions of my will," followed by a devise to "W. G. when he is of the age of twenty-three years, two hundred acres, or if sold before he arrives at the years mentioned, that some other lot of land or money amounting in value to the above mentioned lot be given him in lieu thereof."

Held, that the wife took a life estate with a vested remainder over to W. G.

Held, also, that "two hundred acres of land, the west half of lot No. 14" was *falsa demonstratio* of the west half; the testator having referred to the whole lot as being two hundred acres in a subsequent part of the will.

Blake V. C.]

[Feb. 4]

PIERCE V. CANAVAN.

Mortgagor and mortgagee—Purchase of part of mortgaged estate—Liability of purchasers.

B., the owner of two parcels of land (D. and E.), mortgaged them to one J., who assigned the security, after which J. obtained from B. a transfer of his equity of redemption. Shortly afterwards J. sold a portion of lot D to P., who sold and conveyed to the plaintiff who, a few days later obtained from J. a conveyance of the remainder of the lot (D); the plaintiff on each occasion paying his purchase money in full and receiving a conveyance with covenants as to title; and J. at a subsequent date sold the remaining lot (E) to one C., who sold and conveyed his interest to the defendant Canavan. The agreement throughout was that J. was to discharge the mortgage.

The Court [BLAKE V. C.] under these circumstances *held*, that the plaintiff was entitled to call upon the owners of lot E to the extent of the value thereof to indemnify him against the claim under the mortgage, that lot being liable in their hands for the full amount of the incumbrance, in the same manner and to the same extent as it had been liable in the hands of J.; in this respect following the cases of *Parker v.*

Glover, 24 Gr. 537; *Clark v. Bogart*, 27 Gr. 450; *Nicholls v. Watson*, 23 Gr. 606; *Clarkson v. Scott*, 25 Gr. 373.

Blake, V. C.]

[Feb. 7.]

STAMMERS V. O'DONOHUE.

Specific performance—Signature of parties to contract—False statements as to state of property.

It is not necessary that the name of a party to a contract for the sale of property should be actually signed thereto; it is sufficient if the alleged contract is in writing and is subsequently recognized by one of the parties thereto in any writing signed by him or his agent. Therefore, where property was sold by auction and the contract was duly signed by the purchaser, but was not by the vendor or the auctioneer acting in the matter of the sale, and subsequently in consequence of delays on the part of the purchaser, the attorneys for the vendor, (one of whom was the vendor himself,) wrote, "Re S's purchase we would like to have it closed," and referring to certain representations made in advertisements of sale, "they were not made any part of the contract of sale. . . . Have the goodness to let us know whether the vendor will pay cash or give mortgage. If the latter, we will purchase it at once and send you draft for approval," and on a subsequent occasion, "Re S.'s purchase. Herewith please receive deed for approval," and on another occasion the vendor himself wrote, "I shall take immediate steps to enforce the contract.

Held, that there was sufficient in writing signed by the party to be charged to take the case out of the Statute of frauds; and that the purchaser was entitled to a specific performance of the agreement for sale.

Although a vendor is allowed great latitude in the statements or exaggerations he may make as to the general qualities and capabilities of lands he is about to offer for sale, still he will not be permitted to make direct misstatements and misrepresentations as to matters of fact which would naturally have the effect of inducing parties resident at a distance to bid for the property; therefore, where an advertisement of property about to be sold, was described as being "a farm of 81½ acres, twenty acres