

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

Ferguson, J.]

[January 12.]

IMPERIAL BANK V. METCALFE.

Vendor and purchaser—Conditions of sale—Time for objections—Statute of Uses—Discharge of mortgage.

Appeal from the Master's report.

When on a sale of lands the contract provided that the purchaser should be allowed ten days to make requisitions on title, and the purchaser made certain objections within the ten days, and the answers not being satisfactory refused to complete, whereupon the vendor sued for specific performance and obtained the usual judgment.

Held, that the purchaser could not raise in the Master's office fresh objections not raised within the ten days mentioned in the contract.

Certain owners of the equity of redemption in lands by deed granted the same to "A., his heirs and assigns, to have and to hold the same to A., his heirs and assigns, unto, and to the use of B., his heirs and assigns." This was dated July 17th, 1875, and registered July 21st, 1875.

Held, that whether this deed operated under the Statute of Uses or not, B. took under it the beneficial interest in fee, and it had the same effect as if it were a conveyance to A. upon trust for the benefit of B.

The equity of redemption in the said deed conveyed was subject to two mortgages—the M. mortgage and the S. mortgage. The discharge of the M. mortgage was registered on July 21st, 1875, the same day as the deed.

Held, that the deed must be assumed to have been delivered before the day it was registered, and the discharge of the M. mortgage on registration operated as a re-conveyance to B., who was the assignee of the mortgagor within the meaning of the statute respecting the effect of registering a discharge of a mortgage.

MacLennan, Q.C., and Galt, for the appellant.

Bain, Q.C., and Masten, for the respondents.

Cameron, C.J., C.P.]

[February 1.]

INGALLS V. MCLAURIN.

Mortgagor and mortgagee—Collusive sale—Fraud—Right to redeem.

Action for redemption.

The defendant, being mortgagee of certain lands, advertised them for sale under the power of sale, and employed one M. to buy them in for him, and M. bought them in in his own name, but forthwith conveyed them to the defendant. The defendant, being advised that the sale was bad owing to defects in the mode of exercising the power, went to J., the mortgagor, and bargained with him for the purchase of his wife's dower, which was not barred in the mortgage, and of two adjoining lots for \$700. A deed was accordingly prepared and signed, J. joining therein under a mistaken idea that he was doing so merely for conformity, and that the defendant already had a good title to the equity of redemption under the mortgage sale. This deed was sent to J.'s solicitors, who advised him as to his legal position, and retained the deed in their hands, while J. brought this action for redemption.

Held, that the plaintiff should be allowed to redeem.

Though it may be that a mortgagee is not, strictly speaking, a trustee for the mortgagor, but is entitled to enforce his security for his own benefit to satisfy the mortgage money, the right of the mortgagor to redeem is a very pronounced and decided right and one that he cannot be deprived of by any dealing between him and the mortgagee that is not carried out in a full spirit of fairness without undue pressure, influence, or concealment of anything of which he should be informed by the mortgagee.

J. R. Roaf, for the plaintiff.

W. Nesbitt, and A. R. Lewis, for the defendant.