

patents as they might elect, and an order was made accordingly under Rule 196, (Ont. Rule 296). On the hearing of the appeal the Court allowed further evidence to be adduced by the defendant on the merits, by consent.

VENDOR AND PURCHASER—EQUITABLE MORTGAGE—NOTICE—FRAUD OF VENDOR'S SOLICITOR—FORGED RECEIPT FOR INCUMBRANCE OF WHICH PURCHASER HAD NOTICE—PRIORITY—LEGAL ESTATE.

In *Jared v. Clements*, (1903) 1 Ch. 428, the Court of Appeal (Collins, M.R., and Romer, and Cozens-Hardy, L.JJ.) have affirmed the judgment of Byrne, J. (1902) 2 Ch. 399 (noted ante vol. 38, p. 752). The purchaser of land before completion had notice of the existence of an equitable mortgage: relying on the good faith of the vendor's solicitor, he was led to believe by the production of a forged receipt that it had been duly paid off, and completed his purchase, obtaining a conveyance of the legal estate and possession of the title deeds. It afterwards turned out that the equitable mortgagee had not, in fact, been paid off, and this action was brought to enforce his mortgage as against the purchaser, and Byrne, J., held he was entitled to priority, and the Court of Appeal affirmed his decision as Romer, L.J., puts it, the purchaser "knew of the existence of the equitable interest and has not got it in, and therefore he takes the property subject to that interest"; and the possession of the legal estate affords no protection to such a claim.

VENDOR AND PURCHASER—SPECIFIC PERFORMANCE—MISTAKE OF PURCHASER—PURCHASE OF WRONG LOT—SPECIFIC PERFORMANCE—STATUTE OF FRAUDS, s. 4—(R.S.O. c. 338, s. 5)—AUCTIONEER—CONTRACT—WRONG DATE.

Van Praagh v. Everidge, (1903) 1 Ch. 434. This was the case in which Kekewich, J., held (1902) 2 Ch. 266 (noted ante vol. 38, p. 714) that a purchaser who had attended at an auction sale and by mistake purchased a different lot from the one he intended to buy, was bound by his contract, and compellable specifically to perform it. On appeal from his decision, a point which Kekewich, J., considered immaterial, proved sufficient in the eyes of the Court of Appeal (Collins, M.R., and Romer, and Cozens-Hardy, L.JJ.) to warrant the reversal of his judgment, and that point was this: The printed particulars and conditions of sale and annexed form of contract had been prepared for a sale on "October 17, 1901"; the sale on that date had been postponed to November 18, when