

Province of Manitoba.

QUEEN'S BENCH.

Dain, J.]

O'CONNOR v. FAHEY.

[Oct. 20.

*Administration of estates—Q. B. Act, 1895, Rule 766—Discretion of the Court.*

This was an application under Rule 766 of the Queens' Bench Act, 1895, by a legatee under the will of the deceased for an order for the administration of his estate on the ground that more than a year had elapsed from the testator's death, and the legacy had not been paid. The only property out of which the legacy could have been paid was a hotel in the city of Winnipeg, which the executors were directed by the will to sell as soon after the testator's death as they might deem proper, and as soon as they could conveniently do so without sacrificing the estate. The executors had tried to sell the property, but had so far been unable to do so. There were also unpaid creditors' claims to a large amount.

*Held*, that the Court had a discretionary power to grant or refuse the order, and that, as the executors were acting in the administration of the estate, and were in no default, the application should be dismissed with costs.

*Elliott*, for applicant. *Culver*, Q.C., and *West*, for executors.

Province of British Columbia.

SUPREME COURT.

Irving, J.]

TOWN v. BRIGHOUSE.

[Sept. 14.

*Practice—Agreement for sale—Lis pendens—Cancellation of—R.S.B.C. c. 111, s. 85.*

Action for specific performance of an agreement for sale of land. The plaintiff entered into an agreement with an alleged agent of defendant for purchase of certain land belonging to defendant, who repudiated the agreement. Another agent of defendant then made a sale of the same property, and as the conveyance was about to be completed the plaintiff commenced his action for specific performance, and filed a *lis pendens* against the property. The defendant then applied under the provisions R.S.B.C. c. 111, s. 85, to have the *lis pendens* cancelled.

*Held*, that an order will not be made cancelling a *lis pendens* under s. 85 of the Land Registry Act in a case where damages would not be complete compensation.

As the learned judge had doubts as to the plaintiff's ultimate success the *lis pendens* was not cancelled, but the plaintiff was ordered to give an undertaking to abide by any order the Court or a judge may make as to damages