ment; for they contracted in respect of a present appointment, and not a future one at some indefinite time at the will of the company; but even if they could be made liable on notice, no such notice was given.

Peplar, for plaintiffs.

Kean, for defendant.

Divisional Court.] [June 29.

POTTS *v.* BOVINE.

Will—Cujus est solum ejus est usque ad cœlum —Rebuttable presumption—Occupation of adjoining occupant.

The maxim *cujus est solem ejus est usque ad cœlum* is not a presumption of law applicable in all cases and under all circumstances, but the presumption may be rebutted by circumstances existing at the date of the devise showing it was not to apply.

When, therefore, in a devise of land the boundaries, according to the above maxim, would include an edifice built upon a gangway, or right of way, but the circumstances existing at the date of the devise showed that it was not intended so to pass, but was to be part of an adjoining edifice, to which it was attached, and with which it was intended to be used, and was used; it was

Held, to pass under the devise of such adjoining edifice, described, in addition to its metes and bounds, as occupied by its then occupant.

Dickson, Q.C., and *Burdett*, for plaintiff.

Northrup, for defendant.

Divisional Court.] [June 29.

TYSON *v.* ABERCROMBIE

Chattel mortgage—Consideration—Parol evidence to vary.

A chattel mortgage of certain timber was expressed to be given in consideration of the payment of $300 to the mortgagor; all the covenants and provisoes being applicable to a money payment or default therein. The mortgagor's father was indebted to the plaintiff, the mortgagee, for goods, and the father desiring to get more goods, the plaintiff delivered further goods to him, amounting in all to $300, on receiving the mortgage security. The defendant gave parol evidence to show that prior to giving the chattel mortgage the mortgagor's father had sold the plaintiff the timber in question, which was cut off land belonging to the son, the mortgagor; that at the time of the request for the further advance, a portion of the timber had been delivered to the plaintiff; that he declined to make the further advance unless the delivery of the balance of the timber was secured; and that the mortgage was given as security therefor and not to secure repayment of the $300; that such balance had since been delivered; and it was urged that the mortgage was therefore discharged.

Held, that the parol evidence was inadmissible.

Reesor, Q.C., for plaintiff.

Masson, Q.C., for defendant.

Divisional Court.] [June 29.

CLARK *v.* HARVEY.

Mortgage—Short Forms Act—Power of sale without notice—Validity under Act—Entry prior to sale.

The power of sale contained in a mortgage purporting to be under the Short Forms Act, was "Provided that the mortgagee on default for one day, may, without any notice, enter on and lease or sell said lands."

Held, per GALT, C.J., at the trial, that this case was distinguished from *Re Gilchrist and Island*, 11 O. R. 537, as the sale there was by an assignee of the mortgagee, and not, as here, by the mortgagee himself; that under the power entry on the land was not necessary prior to sale.

On appeal to a Divisonal Court,

Held, per ROSE, J., that the power was operative under the Short Forms Act, and therefore the point as to entry was immaterial. *Re Gilchrist and Island* dissented from.

Per STREET, J.—The form was not operative; and the words, therefore, must be confined to their actual meaning apart from the statute; and that under its terms the power did not arise, or, at all events, could not be exercised until entry made on the land.

Osler, Q.C., and *Shepley*, for plaintiff.

Bain, Q.C., for defendant Fisken.

Moss, Q.C., and *A. C. Galt*, for defendant Harvey.

T. P. Galt, for defendant Barwick.