

Ct. of Ap.]

NOTES OF CASES.

[Ct. of Ap.]

MORRISON, J. J. A., being of opinion that the bill was not sustained by the evidence, and that the appeal should be allowed; while PATTERSON, J. A., (ARMOUR, J., concurring with him) was not able to say upon the whole evidence that the learned Vice-Chancellor was wrong in making the decree. The appeal was therefore dismissed.

MacKelcan, Q. C., and *Bethune*, Q. C., for Turner.

Ferguson, Q. C., *McCarthy*, Q. C., and *Bruce* for Stuart.

Blake, Q. C., and *E. Martin* Q. C., for the respondents.

Ch'y.]

[March 2.]

PETERKIN v. MACFARLANE.

Practice—Vacation of decree as against one defendant—Effect as to remaining defendants.

A decree had been made against several defendants, one of them being administrator *ad litem* of an original defendant who died before answering. B., a defendant, appealed from the decree which was vacated as to time, and he was allowed to file a supplemental answer and have a new hearing of the cause. The administrator died after decree, and another administrator *ad litem* was appointed, *pro forma*, to represent the estate of the deceased. He was served with no proceedings, and it was stated on this argument that the plaintiff asked no further relief against the estate. The latter obtained from the referee an order allowing him to file a supplemental answer setting up defences which his predecessor had omitted, which was reversed on appeal to Proudfoot, V. C.

Held, affirming the order of the Vice-Chancellor, that the vacation of the decree as against B. did not necessarily open the case as against the deceased's estate, and that the referee had therefore no power to allow the administrator to answer while the decree stood as against him.

C. Robinson, Q. C., and *T. Langton* for appellant.

W. Cassels, contra.

C. C. York.]

[March 2.]

BLAND v. EATON.

Contract to procure lease—Statute of frauds—Memorandum—Sufficiency of.

The defendant desiring to enlarge his warehouse by occupying the premises adjoining those in his possession, offered the plaintiff, whose lease of the desired premises was about to expire, \$300 to procure from the owners thereof a lease which should be assigned to the defendant, with liberty to open a door-way between the houses. The terms and conditions of the desired lease were left to the plaintiff who was to make the best terms he could. At the request of the plaintiff that the offer should be put into writing the defendant wrote to him the following letter:—

TO MR. JOHN BLAND:

DEAR SIR,—In reply to yours of to-day, I propose to give you \$300, provided you can give me a transfer lease with privilege to make an opening between your premises and my own, cash to be paid on completion of transfer lease. This is as I understand it.

Yours most truly,

T. EATON.

The plaintiff procured a lease and tendered an assignment of it to defendant who refused it, whereupon the plaintiff sued for the \$300.

Held, reversing the judgment of the County Court, that the letter of the defendant was a sufficient memorandum to satisfy the requirements of the 4th section of the Statute of Frauds within which the agreement fell, as being a contract by which the defendant was to receive an interest in land from the plaintiff.

Bigelow, for appellant.

Rose, for respondent.

C. C. York.]

[March 2.]

FISKEN v. O'NEILL.

Insolvent Act of 1875—Sale of debts over \$100 en bloc—Validity of.

Held, affirming the judgment of the County Court, that section 67 of the Insolvent Act of 1875, giving power to sell the uncollected debts of the insolvent, expressly limits the power to selling in the manner prescribed thereby; that the assignee had no power to sell any debt of more than \$100 except by itself, unless in case