

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

a third party as security for an advance to the trustee, and the pledgee subsequently representing himself to be interested in the mortgaged estate, procured a conveyance of the equity of redemption, which he resold at a profit.

Held, that he was not bound to account to the pledgor for the profit so made.

Moss, Q.C., for plaintiff.

W. Cassels, for defendant.

Ferguson, J.]

[Dec. 9.]

WATSON V. KETCHUM.

Compromise of action—Lien—Arbitration—Condition precedent.

Where upon the trial of an action of ejectment, in the year 1875, an agreement was come to between the plaintiff and defendant in the following terms:—"It is agreed that a verdict be entered for plaintiff by consent, and verdict not to be enforced until defendant shall have been paid \$50 towards his costs, and the value of the improvements he has made and are now on the lands in question herein, the value of such improvements to be determined by the award of Peter McNab, Thomas Knight, and Robert Hewitt, or a majority of them. Award to be made in writing on or before the 1st day of June, 1875, or such further time as the arbitrators, or a majority of them, may appoint. Plaintiff agrees to pay said \$50 and amount so to be awarded to defendant, and defendant agrees therefore to execute a quit claim deed of said lots to plaintiffs, and give up possession, both parties to release each other from all further claims."

And the plaintiff in the action afterwards, without paying the \$50 or the value of the improvements, signed judgment and recovered possession under a writ of *hab. fac. pos.* Both parties to the action of ejectment died.

No two of the arbitrators named could agree on the amount to be awarded as the value of improvements.

Held, in an action by the devisee of the deceased defendant in ejectment, against the devisee of the deceased plaintiff in ejectment, that the former was entitled to a lien on the land in question for the \$50 agreed to be paid, and also for the value of the improvements to be ascertained by the Master.

Held, also, that the attaining of the award of the arbitrators as to the value of the improvements was not a condition precedent to the right to recover therefor.

Ferguson, J.]

[Dec. 9.]

FOSTER V. STOKES.

School trustees—Election—Waiver—Retraction of waiver.

At an election of school trustees the plaintiffs received the highest number of votes. Objections were made to the validity of the election, but no legal proceedings were taken to set it aside; a meeting, however, was held by the School Board, at which the plaintiffs were present, at which the alleged irregularities in the election proceedings were discussed, and at which it was agreed, the plaintiffs concurring, that there should be a new election. A new election was accordingly ordered to take place; the plaintiffs offered themselves and solicited votes as candidates for election until the day before polling, when the twenty days for protesting the first election had expired, when they claimed to be elected by virtue of the first election. The second election proceeded and the defendants were elected.

Held, the first election had been waived by the plaintiffs, and they could not retract their waiver. Action to declare the second election void dismissed with costs.

Moss, Q.C., for the plaintiffs.

Blake, Q.C., and *R. Meredith*, for the defendants.

Ferguson J.]

[Dec. 9.]

SUMMERS V. SUMMERS.

Will—Devise of land not owned by testator—Construction of will—Reformation of will.

A testator devised to the plaintiff lot 14 in the 10th concession of Artemisia. The testator did not, and never had owned that lot; but he did own lot 21 in the 14th concession of Artemisia, which was not specifically devised by the will. The residuary devise was as follows: "And the balance of said estate that may remain after paying above bequests, to be paid to my