

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div

application, and discharging the company from all further liability.

C. L. Ferguson, for the petition.

W. F. Burton, for the company.

[A fuller report of this case will be found on p. 428, *ante*.]

Boyd, C.]

[October 30.]

IN RE THE QUEEN CITY REFINING COMPANY OF TORONTO (LIMITED).

Winding up proceedings—Contributories—Stockholders by subscription or allotment—R. S. O. c. 150.

In the winding up proceedings of the Q. C. R. Co. the Master placed the subscribers to the stock-book upon the list of contributories. The contributories appealed upon the ground that although they were subscribers for stock, still no stock had ever been allotted to them by the directors.

Held, that the Master was right, that the contract signed was an unqualified taking of shares, and that the Act R. S. O. c. 150, contemplates two modes of acquiring stock, one by subscription and the other by allotment.

A. Hoskin, Q.C., and *Foster*, Q.C., for the appeal.

S. H. Blake, Q.C., and *Meyer*, contra.

Proudfoot, J.]

[November 11.]

ROBERTSON V. PATTERSON.

Agreement to give covenant to build—Refusal to execute—Specific performance.

In an agreement for the sale of land from R. to P., the terms were inserted in these words: "price \$1,000, \$200 cash and balance in five yearly payments, interest at seven per cent., and covenant of P. to build houses worth not less than \$4,000, to be commenced in a year from date, and finally completed in two years . . ." The \$200 was paid down, and R.'s solicitor prepared and tendered the deeds (in which was inserted a covenant to build) and the mortgage to P. for execution. P. refused to execute them, and R. brought an action for specific performance, which P. defended on the ground that the covenant to

build was too vague, and would not be enforced by the Court.

Held, that the plaintiff was clearly entitled to the performance of the defendant's agreement to give a covenant to build houses of a certain value within a specified time.

Wood v. Silcock, 50 L. T. N. S. 251, distinguished.

Moss, Q.C., for the plaintiff.

S. H. Blake, Q.C., and *Wilson*, for the defendant.

Divisional Court.]

[December 3.]

MORRISON V. MORRISON.

Will—Construction of—R. S. O. cap. 106, sec. 26—Devise of after acquired realty—"Contrary intention."

The will of D. M., dated 19th May, 1873, contained the following devise:—"I give and bequeath to my brother, Robert Morrison, \$500, and the property on Hughson Street. I give, devise and bequeath all the rest and residue of my estate, real, personal and mixed, which I shall be entitled to at the time of my decease, to my nephew, Alexander Morrison." The testator died 8th March, 1883. At the time of making the will the testator was possessed of one property on Hughson Street, which was known as the Red Lion Hotel, but he subsequently acquired, and owned at the date of his death, other properties on the same street, but unconnected with the hotel and upon the opposite side of the street. The action was brought to determine whether, upon a true construction of the will, the subsequently acquired properties passed under the devise of "the property on Hughson Street," or under the residuary devise.

Held, affirming the decision of *Boyd, C.* (*Proudfoot, J.*, dissenting), that the residuary clause conveyed all property acquired by the testator subsequent to the date of the will, and that a "contrary intention" was sufficiently displayed by the will to render the statute inapplicable.

James Parkes, for defendant Robert Morrison.

E. Martin, Q.C., *Waddell* and *Furlong*, for other parties.