

there should be an appropriation of the purchase money and notice to the vendor.

In an action on a contract where the vendor was to prepare the deed, and the purchaser got his purchase money ready to pay over and deposited it in the bank, at first to his own credit in his general account, but afterwards to the credit of a special account, of which he gave the vendor notice, and there was a delay of over two years in preparing the deed,

Held, (varying the judgment of ARMOUR, C.J., Q.B.) that the purchaser was bound to pay interest at the legal rate up to the time he deposited it to the credit of the special account, but that after that he was only bound to pay at such rate as he received from the bank.

Furlong and George C. Thomson for the purchaser.

C. W. Colter for the vendor.

Div'l Court.]

[Jan. 22.]

HAYER v. ELMSLEY.

Vendor and purchaser—Proceedings to rescind contract—Wilful default—Interest on purchase money.

The taking of proceedings by a vendor to rescind an agreement for sale of land, successful at first, but ultimately reversed on appeal, is a wilful default and the purchaser is not bound to pay interest on the purchase money for the period of time between the first trial rescinding and the decision in appeal restoring the contract.

The judgment of ROSE, J., varied.

Meredith, Q.C., and Donovan for plaintiff.

Cassels, Q.C., and D. T. Symons for defendant.

TRUST & LOAN CO. v. STEVENSON ET AL.

Mortgagor and mortgagee—Payments of interest by a stranger after conveyance to a purchaser—Statute of Limitations—Title by possession.

The plaintiffs were mortgagees of certain lands in 1863. J. S. was a subsequent mortgagee, and became the owner in May, 1869. He paid the interest as it became due to the plaintiffs, and in September, 1869, sold to a purchaser for value, through whom the defendant P. claimed title, covenanting that the land was free from encumbrance and that he had done no act to incumber. He went on paying the interest regularly to the plaintiffs up to the

time of his death in 1884, and his executors paid interest up to 1890, when they ceased paying. The defendant P. had become the owner in 1888, deriving title from the grantee of J. S., and claimed title by possession without any notice of the plaintiffs mortgages.

On a special case stated for the opinion of the Divisional Court it was

Held, that the payments made by J. S. after his conveyance in 1869 were made by him as a stranger, and would not prevent the Statute of Limitations running in favor of the defendant P., and that he had acquired title by possession.

Marsh, Q.C., for the plaintiffs.

Delamere, Q.C., for the defendant Perry.

G. F. Ruttan for the executors.

FRONTENAC LOAN & INVESTMENT SOCIETY v. HYSOP.

Mortgage—Covenant by purchaser to pay off—Right of mortgagee to bring action—Privilege—Costs.

The defendant purchased part of certain lands which were mortgaged to the plaintiffs, and in his purchase deed covenanted with his vendor to pay \$3,000 to the plaintiffs. In an action by the plaintiffs to recover that amount it was

Held, (affirming ARMOUR, C.J., Q.B.) that there was no privity between the purchasers and the mortgagees, and that the plaintiffs could not recover.

The plaintiffs' statement of claim alleged a covenant to pay the plaintiffs, and that the defendant had asked for and obtained time for payment from the plaintiff.

Held, that it would not have been safe for the defendant to demur in the face of these averments, and the usual costs of an action were given.

Walkem, Q.C., for the appeal.

H. V. Lyon contra.

Div'l Court.]

[Jan. 27.]

BURNS ET AL. v. DAVIDSON ET AL.

Fraudulent conveyance—Lands in foreign country—Jurisdiction.

In an action by a judgment creditor to declare a conveyance made by a debtor of property situate in a foreign country, subsequently acquired by him, fraudulent and void where