

Ct. Ap.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

C. C. Elgin.]

[September 29.]

LOGG V. ELLWOOD.

Question of fact for jury.

In an action for wages there was a dispute between the parties as to the nature of the agreement for hiring. There was evidence at the trial which would have supported a finding for either party. The question was wholly one of fact and of the credibility of witnesses. The jury found in favour of the plaintiff, but the judge set aside the verdict and sent the case to a referee, who found substantially as the jury had done. Upon motion the judge made an order sending the case back to the referee with instructions to find against the plaintiff upon one branch of the case.

Held, that the case was one specially proper for the decision of a jury, and that the verdict and finding of the referee should not have been interfered with.

J. Robinson, for appellant.

Deherty, for respondent.

C. C. Norfolk.]

[September 29.]

FORSE V. SOVEREEN.

Distress for rent—Lease may be reformed in favour of bona fide purchaser for value.

In an action for replevin of goods seized under a distress for rent, the plaintiff claimed that there was nothing in arrear, and proved the payment of certain sums to the solicitor of a first mortgagee, and also claimed a deduction of \$15 for a quantity of manure expended on the demised premises under an alleged agreement with the lessor. The seizure was made by the defendant S., to whom the landlord had assigned the plaintiff's lease as collateral security for payment of a second mortgage. The lease did not express what was held at this trial to be the true agreement, that manure was to be supplied and \$15 deducted from the rent during each year of the tenancy.

Held, that the lease ought not to have been reformed as against S., who was a bona fide purchaser for value without notice of the facts on which the plaintiff's equity depended.

Held, also, that although a new contract of

tenancy may be inferred from a notice by the mortgagee to pay rent to him, acquiesced in by the tenant by payment of the rent, yet, as the circumstances of the case showed that it was not intended to create such a contract, but rather that, the interest being paid, the possession of the mortgagor and his co-tenants was to remain undisturbed, it could not be said that the plaintiff's tenancy had been put an end to by the intervention of the first mortgagee.

Aylesworth, for appellant.

W. N. Douglas, for respondent

CHANCERY DIVISION.

Ferguson, J.]

[October 1]

RE STEVENS.

STEVENS V. STEVENS.

Will—Legacies—Time for vesting.

S., by his will, devised four legacies to his daughters in four different clauses worded as follows: "I bequeath to my daughter (name) the sum of five hundred dollars." By a subsequent clause he provided "I also order that should any of my daughters die their portion to be equally divided among the remaining ones." The legacies were charged on his lands. Directions were also given that after a certain farm which he had purchased in his lifetime, but had not paid for, was paid for, and all his debts paid, his two sons, E. and A. "shall each pay my daughter M. A. S. the sum of \$50, which she shall receive together with the rent of Lot 126 from the executors, to apply on her legacy. The other three daughters to be paid in the same manner; E. in one year after M. A., etc." A direction was also given that in case of any of the daughters dying, their funeral expenses were to be paid out of their legacies, and in case of sickness their physician's bill to be paid from the same source.

Held, on an appeal from a Master that these provisions, and all others of a like kind in the will, had reference at most to the mode and time of payment of the legacies, and not to the substance of the gift, and that as the tes-