

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

family, "and at her decease the whole of the personal and real property to be equally divided between my six children."

Held, the shares of the children vested on the death of the testator. *Baird v. Baird*, 26 Gr. 367, discussed and reconciled, and declared to be wrongly reported.

Held also, "worldly estate" includes, not only the corpus of the testator's property, but the whole of his interest therein.

Wood, (*Webster* with him), for the plaintiff.

Reynolds, for the defendant.

Proudfoot, J.]

[May 18.]

RE HOUSTON; HOUSTON V. HOUSTON.

Mortgage—Notice of payment off—Parol evidence.

Where a mortgagee comes in, under a decree for partition or sale and proves his claim, he cannot demand six months interest or six months notice.

Held also, following *Totten v. Watson*, 17 Gr. 233, that a parol agreement to pay a larger interest than that reserved by the mortgage is ineffectual to charge the land.

Small, for defendant J. Henderson.

Plumb, for the infant defendants.

Langton, for the plaintiff and other defendants.

Proudfoot, J.]

[May 18.]

RE CHARLES; FULTON V. WHATMOUGH.

Will—Vesting—Executory interests.

A testator left real and personal property to trustees on trusts to sell, and after providing for a certain annuity to the widow and for the education of the children, to invest and accumulate the surplus, and at the end of the period limited for the accumulation, to stand possessed of the same for the same trusts as were declared of the funds from which they proceeded.

He did not expressly limit the time during which the accumulations were to be made, but, in a subsequent part of the will, he directed that the trustees were to hold the trust moneys "after the death or second marriage of his wife, and his youngest child attaining 21 years," in trust for his sons and daughters in equal shares as tenants in common; and in the event of all his children dying, and in default of issue of such children attaining majority, he devised the whole

estate, real and personal, to the trustees to be converted into money, and applied to founding an asylum for the dumb and blind.

Held, on a view of the whole scope of the will, so far as could be gathered from the confused language employed, and having regard to the fact that there was no direction that the division among the children was to be made "after the death or second marriage of his wife, and the youngest child attaining 21," but on the contrary the duties of the trustees with regard to the property were evidently not intended to cease then, and especially having regard to the devise over to the charity. The children, who survived the death of the wife and the majority of the youngest child, did not thereby and thereupon take absolute interests, but the estate continued in the trustees till the grand-children attained majority, and it was only then that the trusts could be deemed at an end, and failing the attainment of majority by the grand-children the property went to the charity; and the rule in *O'Mahoney v. Burdett*, L.R. 7 H.L. 388, and *Ingram v. Soutten*, ib. 408, applied.

Macleanman, Q.C., (*Langton* with him), for the petitioner.

Plumb, for the infant defendants.

W. Davidson, for the trustees.

[This same will came before the learned judge on a former occasion—23 Gr. 610: Rep.]

Proudfoot, J.]

[May 18.]

VILLAGE OF BRUSSELS V. RONALD.

Mortgage to municipality—R.S.O. c. 174, s. 454 sub-s. 5, (b).

In pursuance of a by-law, passed under the above section, and in consideration of a bonus granted thereunder, the defendant executed a mortgage of land, to the municipality of the Village of Brussels, conditioned for the carrying on of certain manufactures in the village for the term of 20 years, next ensuing the date thereof, without interruption for a longer period in any case than 12 months, and that he should at all times during the continuance of the said term of 20 years, have and keep invested in the said municipality at least \$30,000. The by-law itself only required that the defendant should execute a mortgage for \$10,000.

Held, the mortgage created a charge on the land to secure the performance of work and in-