

BOYD, C.]

[June 4.]

CANN v. KNOTT.

Free grants and homesteads—Exemption from execution—Interest of original locatee as mortgagee after alienation.

The defendant was locatee of certain land under the Free Grants and Homesteads Act, R.S.O., c. 25, and duly obtained patents therefor. Afterwards he and his wife sold and conveyed parts of the land, taking back mortgages to secure the purchase money.

Held, that the mortgages were not interests in the land exempt from levy under execution within the meaning of s. 20, s-s. 2.

The exemption extends to the land or any part thereof or interest therein, so long as it is held by the original location title, whether before or after patent; but where there has been a valid alienation, a mortgage taken by the original locatee does not vest in him qua locatee. Moreover, the word "interest," used in the subsection, does not extend to the chattel interest of a mortgagee.

D. Urquhart for the plaintiff.

Foy, Q.C., for defendants.

Divl Ct.]

[June 6.]

MCCRANEY v. MCCOOL.

Partnership—Dissolution—Pending contract.

The defendants contracted to deliver lumber to a firm of three partners. Before delivery the firm was dissolved, and the defendants refused to carry out their contract.

In an action brought in the individual names of the three partners for damages for non-delivery,

Held, that the dissolution of the firm was no justification in law for the defendants' refusal to carry out their contract.

Fullerton, Q.C., for plaintiffs.

M. J. Forman for defendants.

Chancery Division.

BOYD, C.]

[June 6.]

MACKLEM v. MACKLEM ET AL.

Will—Devise—Forfeiture—Actual possession and occupation—Possession by servant, caretaker, or worker on shares.

S. M. had become entitled under T. C. S.'s will to certain property called "Clark Hill," of

which T. C. S. was owner when he died, and also to an undivided interest in certain other property of which T. C. S. was tenant in common with others. He also became entitled to a legacy under the following clause of A. H. S.'s will: "I will and direct that so soon as S. M. * * can and does take actual possession of the real estate and property * * under the will of T. C. S. * * my executors shall * * so long as he remains the owner and actual occupant of the said real estate pay over to him * * the annual sum of \$2,000 to enable," etc.

Held, that this clause read in connection with the will of T. C. S., referred only to the land of which T. C. S. was absolute owner and not to the land he owned as tenant in common.

Held, also, that actual possession and occupation as to the land is consonant with and satisfied by the possession of a servant or caretaker or even a worker on shares.

F. Hodgins for plaintiff.

Robinson, Q.C., for S. Macklem.

Moss, Q.C., and Bruce, Q.C., for Mrs. Fuller and assignees.

Bicknell for D. C. Plumb, Executor of J. B. Plumb.

O. Macklem for Mrs. Becher, and Executors of Julia A. Macklem.

Divl Ct.]

[June 9.]

WHITE v. TOMALIN.

Sale of goods—Agreement in writing—Offer—Statute of Frauds—Evidance.

In an action for specific performance of an alleged agreement worded as follows: "I hereby agree to sell my stock of * * * and agree to take in payment for said stock * * one hundred acres of land being * * (terms set out) and signed J. T. (defendant) and F. B. McM. (assignor to plaintiff)," it was

Held (affirming FALCONBRIDGE, J.) that the document was not an agreement in writing sufficient to satisfy the Statute of Frauds but a mere offer or proposal to sell.

It was shown that an acceptance worded "I hereby agree to purchase the above mentioned stock in the terms aforesaid and to convey the land intended to be taken in exchange," was subsequently added and signed by F. B. McM.