

CROWN CORUNDUM AND MICA CO. v. LOGAN.

Falconbridge, C.J.K.B., Street, J.]

[March 5.

*Action—Order to do an act, or dismissal of action—Default—Effect of—
No further order to dismiss.*

Per MEREDITH, C. J.C.P. Where an order is made for the doing of an act or in the alternative that the action should be dismissed, when default is made in the doing of the act, the order operates to put an end to the action and no further order is necessary and the action being dead the court has no power to relieve from the consequences of such default.

On an appeal, a Divisional Court, being of opinion that under the circumstances the action should be dismissed, declined to consider the question of the necessity of a further application or the power to relieve from the default.

Middleton, for the appeal. *G. F. Macdonell*, contra.

Street, J., Britton, J.]

[March 5.

BIRKBECK LOAN COMPANY v. JOHNSTON.

*Trustees of shares in building society—Mortgage of—Notice—Purchaser of
land for value subject to mortgage collateral to loan on shares without
notice that shares pledged for prior loan—Consolidation—Purchaser of
trust shares.*

The defendant A. J., being the holder of six shares of class A permanent stock in her own name, and six shares of class C instalment stock "in trust," and other shares of class B stock in a building society, obtained a loan of \$700 from the company and transferred to the company's treasurer, as security, "All my stock in the said company," consisting of shares of class A, B and C stock held by me in the said company," and "All other stock or shares held by me in the said company." Subsequently she obtained a further loan of \$600 and transferred it to the treasurer, as security, six shares of class C instalment stock, the intention being to transfer the six shares held in "in trust" and already assigned as the company contended to secure the prior loan of \$700, giving also a mortgage on land, reciting that she was the owner of six shares of the capital stock of the company, and that the company had agreed to advance \$600 upon the said shares with this mortgage as further security. The defendant A. K. J. became the purchaser of the land subject to the \$600 mortgage (which she assumed), and purchased from A. J. her equity in the six shares of instalment stock so held "in trust" and took subject to the \$600 mortgage. In an action by the company claiming consolidation of the loans and payment of both mortgages or foreclosure.

Held, that the use of the words "in trust" put the company upon inquiry, and they were affected by the notice that A. J. was not the owner of the shares and had no power to mortgage.