

Chan.]

NOTES OF CASES.

[Chan.]

unbuilt upon, except one residence with the necessary outbuildings including porter's lodge; the purchaser on his part covenanting that he or his assigns would not allow any business of a public nature, such as a tavern, requiring a license to make it allowable in the eye of the law to be carried on upon the portion conveyed to him. A bill was filed alleging that the vendor and the defendant E. M., who resided with him, were in violation of the covenant erecting a house upon such square not within the exception in the covenant. The bill set forth the dimensions of the square and alleged that the same was particularly shewn and delineated on the map of the city of Toronto published in 1857—and was situated between certain named streets.

Held,—on demurrer for want of equity—that the square was pointed out with sufficient distinctness, and the fact that it comprised about six acres of land while the portion conveyed to the purchaser was about $\frac{1}{4}$ of an acre only, was not such a ground of hardship as would prevent the Court from interfering by injunction to restrain the breach of covenant, and E. M. being joined with the vendor in the erection of the house, she could not be heard to say she had not notice of the covenant—and the demurrer was overruled with costs.

MacLennan, Q. C., for plaintiff.

Black, for defendant Denison.

Delamere for defendant Wynn.

Proudfoot, V. C.]

[March 9.]

SIEVEWRIGHT V. LEYS.

Will, construction of—Conversion of realty—Demurrer—Chose in action—Married woman.

The bill for the administration of the estate of G. E. alleged that G. had appointed his brother J. E. his executor, and devised to him all his estate upon trust for the benefit of the testator's wife and children as to J. should seem best: the will giving J. power to sell the realty. J. E. proved the will of G., and shortly after his death made his own will by which he purported to dispose of G.'s estate, the validity of which the bill impugned, and C. S. D. a married daughter of G. was made a defendant, the bill alleging her to be the wife of S. H. D. J. E. made an appointment under G.'s will of a cer-

tain portion of the estate in favor of C. S. D. The defendant demurred on the ground that S. H. D. should have been a party.

Held,—That the interest of C. S. D. was merely a chose in action not reduced into possession by her husband, in respect of which she might be sued as a *feme sole*, and therefore the demurrer was overruled with costs following *Lawson v. Laidlaw* 3 App. R. 77. The bill distinctly charged that the defendant had misapplied the moneys of the estate of G., mixing them with his own and employing them for his own purposes a demurrer *ore tenus* that G.'s estate was not properly represented, on the ground that one executor could not represent the estates of both G. and J., was also overruled with costs; for although during the progress of the cause it might become necessary to have different persons represent the two estates that did not constitute a ground of demurrer.

Boyd, Q. C., and *Black* for plaintiff.

Moss and *Kingsford* for defendant.

Proudfoot, V. C.]

[March 11.]

SMITH V. PETERSVILLE.

Municipal Council—Resignation of candidate after election—Notice of resignation of seat.

Sect. 195 of the Municipal Act provides that the effect of a party disclaiming the office to which he has been elected shall be to give the same to the candidate having the next highest number of votes.

Held, that this meant the candidate having such number of votes who has not been elected to the Council; therefore where the plaintiff was the candidate who was the fourth in that order, the three highest on the list having been declared elected Councillors for the village of Petersville, and one at head of the poll resigned his seat, an injunction was granted to restrain the Reeve and Councillors of the village from preventing the plaintiff entering upon and discharging the duties of such office.

The notice of the party resigning the office stated that he resigned his seat in the Council.

Held, sufficient, although the Act requires notice of a resignation of the "Office" to be given; and that the plaintiff was entitled to his costs to be paid by the defendants.