

[Chan.]

NOTES OF CASES.

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O., ch. 118,) in the debtor when sued not insisting on the fact of the credit not having expired, or that the debt had been merged in the mortgage.

*W. Cassels*, for plaintiff.

*C. Moss*, for defendant.

#### STARK V. SHEPPARD.

##### *Vendor and Purchaser—Mortgage—Costs.*

The plaintiff purchased a house and lot from defendant for \$2000, paying \$1000 in cash, and assuming a mortgage to a building society "on which \$664 is yet unpaid," and giving a mortgage to the defendant for the balance. The defendant covenanted that he had not incumbered, save as aforesaid. Subsequent enquiries shewed that there were due the society seventy-one monthly instalments of \$16.75, in all, \$1189.25, and the plaintiff insisted that he was entitled to credit from the defendant for the difference between \$664 and the latter sum. But;

*Held*, that the plaintiff was entitled to retain in his hands, only the cash value of the mortgage at the date of his purchase, if the society would accept it, if not then such a sum, as with interest on it, would meet the accruing payments.

The defendant by his answer, admitted an error in the computation of the amount due the society, and offered to pay the difference between the \$664 and what he alleged was the cash value and costs up to that time.

*Held*, that in the event of the society accepting present payment of the cash value, the defendant was entitled to his costs of suit, subsequent to answer.

*C. Moss*, for plaintiff.

*A. MacNab*, for defendant.

#### WEBSTER V. LEYS.

##### *Will, construction of—Vested interest.*

The testator gave £1500 by his will to his widow, and in the event of her marrying again or dying intestate, this sum was at her death to be divided share and share alike among "my heirs (my brother's children)". The widow did marry again, and a daughter of W., a brother of the testator, died after the marriage but be-

fore the death of the widow, and so before the time for distribution.

*Held*, that the rule in such cases is, that a bequest in the form of a direction to pay, or to pay and divide at a future period, vests immediately if the payment be postponed for the convenience of the estate, or to let in some other interest; that the intention here was to let in the life estate of the widow, and that this was a share vested in the deceased child of W., which passed to her representatives.

*D. Black*, for plaintiff.

*C. Moss*, for defendant.

#### HUNTER V. CARRICK.

##### *Patent of invention—Infringement of Patent.*

In November, 1879, the plaintiff obtained a patent for new and useful improvements in bakers' ovens, which was expressed to be "In combination with a baker's oven, a furnace, 'D,' set within the oven but below the sole 'A.'" This patent he surrendered, and a new one issued in August, 1880, on the ground that the first was inoperative by reason of the insufficiency of the description. The new patent was for the unexpired portion of the five years covered by the first patent. The claim of invention, as set forth in the specification, was, 1st, In a fire pot or furnace placed within a baker's oven below the sole thereof, and provided with a door situated above the grate. 2nd, In a fire pot or furnace placed within a baker's oven, provided with a door above the level of the sole of the oven, and connected with the said furnace by an inclined guide. 3rd, In a flue, 'H,' leading from below the grate 'B' to the flue 'E.' 4th, In a baker's oven, provided with a circular tilting grate situated below the sole of the oven, and provided with a door. 5th, In a cinder grate, 'F,' placed beneath the fire grate 'B,' in combination with a flue 'H.' The plaintiff, in his specifications, claimed all these as his inventions; in his evidence he claimed each of the combinations to be the subject of the patent.

*Held* (1), if the plaintiff was correct in the latter view, that the last four combinations being new, the first patent could not have been inoperative as to them; and the second patent in respect of these must be construed as an inde-