

Early Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE FOR ONTARIO.

Queen's Bench Division.

Armour, C. J.]

[Oct. 5.]

*In re BOBIE AND ONTARIO INVESTMENT
ASSOCIATION.*

Vendor and purchaser—Requisitions—Certified copies of deeds—Removing clouds on titles—Lis pendens—Power of attorney—Compensation for deficiency in land sold.

Upon a petition under the Vendor and Purchasers Act,

Held, 1. Following *McIntosh v. Rogers*, 12 P. R. 389, that the purchasers were entitled to certified copies of registered deeds or memorials of deeds in the chain of title, which the vendors were unable to produce. The statute 10 Anne, c. 18, does not bear such analogy to our registry laws as to make *Cooper v. Emery*, 1 Phil. 390, an authority to the contrary.

Held, 2. That the purchasers were entitled to have removed from the registry as clouds upon the title: (a) A certain certificate of *lis pendens* in an action upon a mortgage which appeared by the registry to be discharged, because it could not be ascertained from the registry itself that the action was in respect of the discharged mortgage; (b) A second certificate of *lis pendens*, in an action to set aside as fraudulent a deed in the chain of title under which the vendors claimed, the vendors not being parties to it, because the vendors, and, if the title passed, the purchasers, might be added as parties; (c) A power of attorney to sell the lands in question, although registered after the mortgage under which the vendors were selling, because the vendors might be affected with notice of the interest claimed by the donor of the power, such interest having accrued, if at all, before the vendors obtained title.

Held, 3. Upon the evidence, that the purchasers were not entitled to a conveyance of

or compensation for a small part of the land contracted for, to which the vendors were not able to make title.

Hoyle, for the petitioners, the purchasers.

W. R. Meredith, Q.C., for the vendors.

Armour, C. J.]

[Oct. 12.]

LE MAY v. MCKAE.

Award—Motion to set aside—Conduct and jurisdiction of arbitrator—Draft award—Admissions of arbitrator—Revoking submission—Discovery of new evidence.

Action upon a sub-contract for railway construction. Motion by the defendants to set aside the award of an arbitrator, made upon a reference to him without provision for appeal, upon the ground that the arbitrator illegally and in excess of his jurisdiction received evidence of a verbal contract or understanding between the plaintiffs and defendants varying the written contract, and awarded payment to the plaintiffs for the timber supplied to the defendants not by board measure, as required by the written contract, but upon a different system of measurement; and upon the ground of the discovery of new evidence, that of one B., and the absence of a material witness, one M.; and upon grounds disclosed in the papers filed, and especially in the memorandum or draft award showing the grounds upon which the award was arrived at.

Held, that the award being good on its face, and the draft award not being delivered with or accompanying the award, the case did not come within the exception stated in *Hodgkinson v. Fernie*, 3 C. B. N. S. 189.

Admissions made by the arbitrator, upon which his award was founded, in conversation with the defendants' solicitors, were not available for the purpose of setting aside the award (see *Dinn v. Blake*, L. R. 10, C. P. 388); nor could the draft award or memorandum be any more available for such purpose than the oral admissions of the arbitrator.

Re Don Valley Railway Co., L. R. 6, Eq. 429, distinguished.

East and West India Docks Co. v. Kirk, 12 App. Cas. 738, in which it was held that the court had jurisdiction to revoke the submission.