

ATTORNEY-GENERAL V. MIDLAND RY. CO.

Ejectment by crown—Statute of Limitations—Pleading—Demurrer—Costs.

In an action by the Attorney-General upon the relation of the Bursar of Toronto University to recover possession of certain lands claimed to be vested in Her Majesty for the benefit of the University. The defendants pleaded, in their statement of defence, that the land in question had been, with the assent and permission of the University and the Bursar as agent, taken possession of by the defendants for the purposes of their railway in that behalf under the statutory powers enabling them to expropriate the land, and that they had since retained and then were in possession thereof, and submitting that the sole remedy of the plaintiff was to recover compensation; and also that the claim of the plaintiff was barred by the Statute of Limitations.

Held, on demurrer, that it was not necessary to set out specifically the Act under which the alleged expropriation took place, or the various proceedings connected therewith.

Held, also, that the Statute of Limitations was no bar to the action, although the action was brought by the Crown in its capacity as Royal Trustee of the land in question, and a demurrer to that part of the defence was allowed. *Reg. v. Williams*, 39 U. C. Q. B. 397, approved; *Attorney-General v. Magdalene College*, 6 H. L. C., distinguished.

Held, also, that in the case of a partial demurrer to a statement of defence, if any one or more paragraphs be demurred to, the Court may properly look at any other paragraph or paragraphs bearing on the same matter of defence, and if the whole taken together disclose a sufficient defence, the demurrer must be overruled.

Held, also, that when a pleading is ambiguous or uncertain the proper remedy is to apply in Chambers to strike out or amend the defective matter, and that a demurrer on that ground will not lie.

Held, also, that the demurrer being partly successful and partly unsuccessful, neither party should get costs.

J. Patterson, for plaintiff.

J. Bethune, Q.C., and *D. Black*, for defendants.

Ferguson, J.]

[Dec. 9.]

RE BINGHAM V. WRIGGLESWORTH.

Vendor and purchaser—Title—Statute of uses—Rule in Shelley's case.

Where by deed certain lands were limited as follows:—*Habendum* "unto the said party of the second part, his heirs, executors, administrators and assigns, upon the following trusts, that is to say, in trust for the sole and separate use of the party of the first part (the grantor) for his natural life, and after his decease in trust for the said party of the third part (the grantor's wife) for her natural life, and after her decease in trust for the heirs of the party of the first part forever. And in the event of the party of the first part surviving the party of the third part, then upon the further trust and confidence forthwith to convey and revest the said trust premises to and in the said party of the first part, his heirs, executors, administrators and assigns, for his and their own proper use and benefit forever. But should the said party of the third part survive the said party of the first part, then and in that event, and in the further event of the decease of the party of the third part, upon trust to convey, transfer and make over the said trust premises to such person or persons, and in such shares interests and proportions, and for such estates, and in such manner, and upon such considerations as the said party of the first part shall in and by his last will and testament order, designate and appoint. But in the event of the said party of the first part dying intestate, then in trust to sell and dispose of, by private sale or public auction, for the most money, or to convey, transfer and set over the said premises for his heirs, executors, administrators and assigns."

Held, the grantor was entitled to the fee subject to the life estate in favour of his wife.

Held, also, that the three parties to the deed could make a good conveyance to a purchaser of the fee simple in possession.

Ferguson, J.]

[Dec. 9.]

WILKINS V. McLEAN.

Pledge of mortgage—Account—Equity of redemption.

Where an indenture of mortgage belonging to a trust estate was deposited by the trustee with