

appoint a receiver by way of equitable execution, merely because it would be a more convenient way of obtaining satisfaction of the judgment than the ordinary modes of execution.

*Held*, that the legal title to the land being in defendant, the judgments, when recorded, would clearly bind such interest. (R.S., 5th series, c. 84, s. 7 (2) and s. 21).

*Held* also, that there was nothing to prevent the sale of such interest under execution in accordance with the provisions of R.S., 5th series, c. 124, in the same way as any other interest of a judgment debtor in real estate.

*Henry*, for appellant. *Mellish*, for respondent.

Full Court.]

PALGRAVE v. McMILLAN.

[May 23.

*Motion to vary order for judgment refused—Laches.*

On motion to vary the order for judgment made upon the trial of the cause, so as to award to plaintiffs the costs of certain issues raised upon the counterclaim, it appeared that there was an appeal which was disposed of some years previously, and that the decision now sought was not asked for upon the determination of the appealor, that the trial judge was asked to make the order in the form desired, or to deal specially with the costs upon the issues, which appeared to have been considered unimportant. It could not be said that the omission to obtain the order in the form desired, either from the trial judge, or upon appeal, was a "mere slip."

*Held*, that even if the Court had the power to grant the relief sought, they should not exercise it under the circumstances, and after the long delay that had taken place.

*T. J. Wallace*, for appellant. *W. B. A. Ritchie*, Q.C., for respondent.

Full Court.]

SCHNARE v. ZWICKER.

[May 23.

*Breach of covenant for quiet possession—Counterclaim for rectification—*

*Evidence—Rectification ordered—Covenant not to be implied where deed contains express warranty on same subject—Quere, whether action will be on warranty in freehold—Conveyance where freehold is called in question—Evidence as to breach held insufficient.*

Plaintiff claimed damages for breach of covenant for quiet possession and warranty in relation to several lots of land alleged to be contained in a deed from defendant to plaintiff. Defendant counterclaimed to have the deed rectified on the ground that the intention of the parties was to convey the interest of defendant alone in the land in question. The evidence showed that at the time the deed was given defendant was the owner of four undivided sixths of the land, the remaining two-sixths being owned by E. S. and L. S. respectively; also that after the making of the deed by defendant plaintiff purchased from E. S. her one-sixth interest and endeavoured to purchase the one-sixth interest owned by L. S. The interest of L. S. was conveyed to A., who commenced an action for partition, which was the breach of warranty relied upon.