

C. of A.]

GOYEAU V. GREAT WESTERN R. C.—RE FORD.

[Chan. Ch.]

expired on a Sunday, without an order having been made allowing the appeal: *Held*, that this does not give the party wishing to appeal, the following day to procure his order, nor is it a "special circumstance" under sec. 26.

[January 29, 1879.—Burton, J.]

Judgment in the above matter was given in the Court of Appeal, on Friday, December 6th, 1878, reversing the decree of the Court below, and dismissing the plaintiff's bill with costs. On Saturday, January 4th, 1879, the plaintiff filed security with the Registrar of the Court of Appeal, and on the same day served notice of filing it and of motion for allowance of the Appeal to the Supreme Court, returnable on Monday, January 6th. The motion was on that day enlarged at the request of the defendants.

W. Barwick, for the plaintiff, now moved for an order for allowance of plaintiff's appeal to the Supreme Court, the security required by 38 Vict. c. 11, sec. 31, having been filed.

H. Cassels, contra: The Court has no jurisdiction to entertain the application. By sec. 25 of the Supreme Court Act (38 Vict. c. 11), the appeal must be within 30 days from the pronouncing of the judgment appealed from, and by sec. 28 the mode of bringing an appeal is laid down to be—"That the party desiring so to appeal shall, *within the time hereinbefore limited in the case*, have given the security required, and obtained the allowance of the appeal." Here the 30 days expired on Sunday (January 5th), without an order having been made allowing the appeal. No special circumstances are shewn to warrant an order allowing the appeal after 30 days, under sec. 26 of said Act.

W. Barwick, in reply: The last of the 30 days being a Sunday the plaintiff has the next day for complying with the Act, and motion to have the appeal allowed was on that day brought on and enlarged at the defendant's request, and therefore this motion must now be treated as if held on that day. This appeal should be allowed under sec. 26.

BURTON, J., after conferring with the other Judges, held the last of the 30 days limited by sec. 26 of the Supreme Court Act for the allowance of the appeal being a

Sunday did not give the plaintiff the following day to procure his appeal to be allowed, and is not a special circumstance warranting an order enlarging the time for such allowance under sec. 26 of the Act.

Motion dismissed with costs.

COURT OF CHANCERY.

(Reported for THE LAW JOURNAL, by F. LEPROY, Barrister-at-Law.)

CHAMBERS.

RE FORD.

Surviving executor—Power to sell—Case stated under Vendor and Purchaser Act.

Where a testator devised lot A, "with power to the executors herein mentioned, to sell and invest the proceeds," the devisee to receive the interest during his life, and after his death proceeds to be divided among the testator's family, — and also devised lot B, subject to a condition that "if the executors think best, and if his mother agree to it, they may sell the said property," and after payment of debts, divide the balance among the testator's family; and in the clause appointing the executors, the words "to see my will carried into effect" were added: *Held*, as to lot A, the surviving executor could make a good title in it to the purchaser, but as to lot B, by the death of the mother the power to sell is gone.

[Proudfoot, V.C., Jan. 20, 1879.]

This was a case stated under the Vendor and Purchaser Act, R.S.O., c. 109, sec. 3, by petition of Thomas S. Ford. The facts of the case fully appear in the judgment of the learned Vice-Chancellor.

C. Moss, for vendors, asked for construction of the will of William Ford, and cited *Lane v. Debenham*, 11 Hare, 188; *Lewin on Trusts*, 319; *Chance on Powers*; *Farwell on Powers*, 373; *Brassey v. Chambers*, 16 Beav. 231, 4 De G. M. & G. 528, and cases there cited.

Boyd, Q.C., contra.

PROUDFOOT, V.C. — William Ford died on the 2nd Dec., 1870, having first duly made his will, containing, amongst others, the following dispositions: "I hereby give and devise to my son William, during his life, the use of the east half of the west half of lot No. 28 in the 5th Con. of the Township of Moore, with power to the executors herein mentioned to sell the said parcel of