

C. P.]

NOTES OF CASES.

[Chan.

TURLEY V. BENEDICT.

Lease—Estate for life—Conditions.

Under an indenture made in pursuance of the Act to facilitate the leasing of lands and tenements, between A. B. of the first part, and D. B. and L. B., his wife, of the second part, it was witnessed that the party of the first part agrees to lease to the parties of the second part certain land described; "to have and to hold during their natural life all the privileges and appurtenances of the above mentioned land, with the exception of the hop yard, &c." "And the party of the second part is to have, hold, work, and enjoy during his natural life, or hers, while they have their natural reasoning faculties, and in their right minds; and should the party of the second part, either, or both of them, be deprived of reasoning faculties or incapable of manual labor, they are to have their support in a comfortable and respectable manner while they shall live, from the party of the first part. Should the party of the second part be incapable of taking charge of the place in his after years, as it should be done by good husbandry, then the party of the first part govern the above mentioned lands as seems best to him. The party of the second part, should he require it, shall have the first privilege of dressing and packing his hops, should he have any to dry, at a reasonable price, after the expiration of Podsfellow's lease; with this exception of the party of the first part, the party of the second part is to have peaceable and quiet enjoyment." At the trial the jury found that after the lease D. B. did not cease to possess his reasoning faculties, &c., but that he did become incapable of manual labor, and was incapable of taking care of the place as it should be done by good husbandry.

Held, that under the indenture a freehold estate for life was conveyed; and that such estate was never defeated, for that the finding of the jury disposed of the contingency of the habendum, which was strictly a limitation, and as to the other provisions of the lease, they could not be deemed to be conditions on the happening of which the estate became forfeited.

Clute, for the plaintiff.

G. D. Dickson, for the defendant.

Galt, J.]

VACATION COURT.

[March 25.

EQUITABLE LIFE ASSURANCE SOCIETY V.
WRIGHT.

Principal and Surety.

Held, by GALT J., that the discharge or release by the creditor of one co-surety operates as a discharge of the other co-surety or co-sureties, even although they may be bound by different instruments.

Clement, for the plaintiff.

Hall, for the defendant.

CHANCERY.

Spragge, C.]

[March 12.

OUSTEN V. GRAND TRUNK RAILWAY CO.

Railway Co.—Payment for lands taken for road—Pleading—Parties—Demurrer.

An "action for money had and received will lie wherever a certain amount of money belonging to one person has improperly come into the hands of another." Therefore, where a Railway Company paid to the executors of a tenant for life the sum payable for the fee simple of lands taken by the Company for the purposes of their road, and subsequently the remainderman filed a bill against the Company and the representatives of the tenant for life seeking to obtain payment from the Company of the proportion of purchase money payable to the remainderman.

Held, that the executors were properly made parties with a view to the Company obtaining relief over against them in the event of the Company being compelled to make good the money in the first instance, and a demurrer by the executors for misjoinder of parties was overruled with costs, as the bill alleged all facts necessary to entitle the plaintiff to a direct decree against them, although the bill was not framed with a view to a direct remedy against the executors; for "the payment being made by the Company to the executors of the claims of money, to a proportion of which the plaintiffs were entitled; and the payment being made without the authority of the plaintiffs it became money had and received by the executors to the use of the plaintiffs."

MacLennan, Q.C., for plaintiff.

Moss, for defendants.