

question in this action at \$2,700 each—after an abortive sale by auction. The offer contained a stipulation for a clear deed. Milne went into possession pending the completion of the title and made some alterations in the buildings. Great delays occurred in completing the title, and the purchaser, after having several times requested the vendor to make the title good, finally on the 30th August, 1897, notified the vendor's solicitors that unless title was made to him within two weeks from that date, the offer should be considered as withdrawn, and that he would have nothing more to do with the matter. Two weeks afterwards the purchaser accordingly gave up possession of the property and returned the key. The vendor's solicitors, however, procured a report from the Master dated 18th Sept, 1897, approving of the sale to Milne, and on 29th September an order *ex parte* from the Chief Justice dispensing with payment into Court of the purchase money and that the payment be made to the Imperial Loan and Investment Company at their office in Brandon within ten days after service of a copy of the order and upon the purchaser receiving a conveyance of the property. No conveyance had been tendered to the purchaser before this application; but it appeared that on being served with a copy of the order he stated that he had withdrawn his offer and given up possession of the property and would have nothing more to do with the matter.

Held, that while the order of the Chief Justice remained in force it must be obeyed, although, probably, if all the circumstances had been made known to him, he would have refused it; and that the purchaser must pay the purchase money into Court within two weeks, and in default that the order for execution should go.

Held, also, that the purchaser had not lost his right to call for a good title by going into possession, and that there should be a reference to the Master as to the title.

No costs of the application were allowed.

Clark, for vendor. *Hough*, Q.C., for purchaser.

Province of British Columbia.

SUPREME COURT.

Bole, Loc. J.]

BANK OF MONTREAL *v.* HORNE.

[Dec. 15, 1897.]

Evidence de bene esse—Rule 749—Expediency.

Application to abridge the month's notice required by Rule 749 which provides that "in any cause or matter in which there has been no proceeding for one year from the last proceeding had, the party who desires to proceed shall give a month's notice to the other party of his intention to proceed. A summons on which no order has been made shall not, but notice of trial, although countermanded, shall, be deemed a proceeding within this Rule," and to examine a witness on the ground that he is seriously ill:

Held, on the authority of *Warner v. Mosses*, 16 Ch. D. 100, and giving