

only a conditional acceptance by the plaintiff, who, however, gave uncontradicted evidence of a subsequent verbal renewal by the defendant and acceptance by the plaintiff of the terms of the former written offer.

*Held*, FALCONBRIDGE, J., dissenting, that by the conditional acceptance of the written offer, it was in effect refused, and had ceased to exist when the subsequent verbal agreement was made; it was not necessary for the defendant to plead the Statute of Frauds in rejoinder to the reply, as he was able to show that his offer had been refused; and when the plaintiff was allowed at the trial to give evidence of a subsequent renewal by parol of the terms of the lapsed written offer, the defendant should have been allowed to set up the Statute of Frauds; upon which he was entitled to succeed.

Judgment of MEREDITH, C.J., reversed.

*E. T. English*, for the plaintiffs.

*E. D. Armour*, Q.C., for the defendant, Harrison.

MACMAHON, J. }  
Trial of actions. }

[March 15.]

HULL v. STEVENSON.

*Mortgage for purchase money—Covenant against incumbrances—Claim under prior mortgage—Set-off.*

Denne sold land to Stevenson, who gave a mortgage back for part of the purchase money. Stevenson then sold and conveyed part of the land to Hull, covenanting against incumbrances, and Hull gave him back a mortgage for the purchase money, which mortgage Stevenson assigned to Daubuz. Neither Hull nor Daubuz searched the registry office, and did not have actual notice of the existence of the prior mortgage from Stevenson to Denne.

*Held*, that Hull had no right to have any sum that he might be forced to pay in respect of the mortgage to Denne, set-off against the amount of his mortgage to Stevenson now held by Daubuz.

*W. Nesbitt and R. R. Hall*, for the plaintiff.

*Moss*, Q.C., *Watson*, Q.C., *Poussette*, Q.C., *S. S. Smith*, *W. A. F. Campbell*, *Hayes* and *Dennistoun*, for various defendants.

Mr. Cartwright, }  
Official Referee. }

[March 29.]

WALTERS v. DUGGAN.

*Security for costs—Vacating order—Property within jurisdiction.*

Motion by plaintiff to discharge præcipe order for security for costs, on two grounds: (1) That action being on a covenant in a mortgage, the material shows a good ground for the application of the principle in the cases of *Duffy v. Donovan*, 14 P. R. 159, and *Thibaudeau v. Herbert*, 16 P. R. 420; (2) the plaintiff has been shown to be possessed of sufficient property in Ontario to entitle him to succeed.

*Held*, that plaintiff is not entitled to succeed on the first ground because defendant's affidavit shows "prima facie a good defence" within the decision of FERGUSON, J., in *Feaster v. Cooney*, 15 P. R. 290.