

an answer setting up defences which had previously been pleaded by Brown, to the effect that the plaintiff was barred by the Statute of Limitations; or, if not, that he could only redeem on payment of what was due on both mortgages.

Held, that the letter of 11th May, 1871, was a sufficient acknowledgement of title, and gave a new starting point from which the Statute of Limitations would begin to run, and that the plaintiff's action having been commenced against the representatives of A. L. and Cameron, on 5th Nov., 1880, the Statute of Limitations was not a bar to the plaintiff's right to redeem.

Held, also, that the right to consolidate the mortgages was an equitable right, incapable of registration, and was, therefore, prior to the Registry Act of 1865, a right which could have been enforced against the plaintiff, but that the Registry Act of 1865, s. 66, and the Registry Act 1868, s. 68, were retrospective in their operation, and had extinguished this right as against the plaintiff, who claimed under a registered deed without actual notice: (*Bell v. Walker*, 20 Gr. 558; *Gray v. Ball*, 23 Gr. 390 followed. *McDonald v. McDonald*, 14 Gr. 133. dissented from.

Moss, Q.C., for plaintiff.

S. H. Blake, Q.C., (*Morphy* with him), for defendant.

Proudfoot, J.]

[Dec. 16, 1882.]

SCOTT v. GOHN.

Will—Codicil—Construction—Substitutional gift—Revocation of bequest—Cumulative bequests.

A testator, by his will, dated 11th January, 1856, directed his residuary estate to be sold, and as to one-fourth made the following disposition: "To my daughter Emily (the plaintiff) the legal interest on one-fourth of the remainder of the proceeds of my estate, to be paid to her yearly and every year during her natural life, and after her death the said one-fourth to be equally divided among her surviving children when the youngest arrives at the age of 21 years, or any portion of it may be paid sooner if my executors think it proper or necessary to do so." By a codicil, dated 4th April, 1858, he devised as follows:

"I, Peter Stiver, etc., do hereby will and bequeath to my daughter Emily Scott (the plaintiff) and her heirs, that share or division of my estate, as referred to in a former will, in land, composed of the North East part of lot No. 7, 3rd concession, Markham, and to be by admeasurement 50 acres."

Held, that the codicil had the effect of entirely revoking the bequest of the one-fourth share of the residue, given by the will to the plaintiff and her children, and must be read as made in substitution of that bequest; and that it made no difference that the devise in the codicil was of land, whereas the bequeath in the will was of money.

Held also, that the plaintiff took the fee in the land devised, and that her children took no estate therein.

D. McCarthy, Q.C., and *Reeve*, for the plaintiff.

S. H. Blake, Q.C., for defendant Catherine Miley.

Ferguson, J.]

[Jan. 8.]

GAGE v. CANADA PUBLISHING CO.

Trade mark—Fraud—Injunction—Partnership—Retiring partner.

The plaintiff and the defendant Beatty carried on partnership together, from the 1st May, 1877, to the 28th August, 1879, and during the partnership the defendant Beatty prepared a series of head-line copy books, which were extensively advertised, and by the exertions of the firm widely sold, and which in consequence acquired a great reputation, and large profits were realized from their sale. These books were styled on the covers "Beatty's system of practical penmanship," and were generally known and sold to the trade as "Beatty's Copy Books" and "Beatty's Copies." The firm had registered the books as copyright, but nothing was claimed in the action by the plaintiff by virtue of the copyright.

In 1879 Beatty retired from the firm, his interest having been purchased by the plaintiff for \$20,000—the interest of the firm in the series of copy books being then one of its chief assets. Beatty afterwards, at the solicitation of his co-defendants, the Canada Publishing Company, and in consideration of a royalty to be paid him on the sales, and with the express purpose of enabling the defendant company to publish copy