

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

and desire is that my said grandson J. C. shall not have or go into the possession . . . until he shall have attained the age of twenty-five years, or five years after my death. Secondly I give and bequeath to my son J. C., \$100 annually, during his natural life, the same to be paid to him quarterly . . . and to be a charge on the farm or homestead above devised to his said son John."

*Held* (reversing the decision of Proudfoot, J.) That the effect of the limitations was to give J. C. an estate tail which he had barred as the result of his dealings with the land by way of conveyance. *Greenwood v. Verdon*, 1 K. & J. 74, distinguished. *Per* PROUDFOOT, J. "Heirs of the body" means heirs of the body living at the death of J. C. J. C. took only a life estate, and his heirs of his body would take as purchasers a fee simple. If at J. C.'s death there were no heirs of his body the estate would go to his then living brothers and sisters, in fee simple. *Eden v. Wilson*, 4 H. L. C. 257, distinguished.

*Beck*, for the vendor.

*Beverley Jones*, for the purchaser.

Ferguson, J.]

[Dec. 3, 1885.]

### KEAYS v. EMARD.

*Mortgage—Subsequent parol agreement varying same—Short form deed—Covenant for quiet possession.*

Action on a mortgage given to secure a balance of the purchase money for the land from the plaintiff, the first instalment of which was overdue and unpaid.

The defendant set up that he only accepted the deed from the plaintiff, or executed the mortgage sued on, upon her promising to give him possession at a named date, because he relied on representations of the plaintiff, that no one else was in possession, or had any claim to the land, and that she could give him possession at any time, whereas in fact, as the plaintiff knew, one L. was in possession and claimed a right to be so, and the plaintiff was unable to give up possession at the time named, and when after accepting the deed, and giving the mortgage, the defendant threatened the plaintiff with proceedings to recover possession and damages for breach of the agreement, and for the false representations aforesaid, the plaintiff agreed that in consideration of the defendant forbearing to take such proceedings for a reasonable time, no

instalment should be due under the mortgage, until such time after the time named therein, as equalled the time beyond the time originally fixed for delivery of possession when possession should be actually delivered to the defendant, and that she should pay defendant such damages as he should sustain from non-delivery of possession at the proper date. The defendant further set up that he forbore proceedings accordingly, and that possession was not really delivered till such a date that, by virtue of above transactions, nothing would be due under the mortgage till January 1st, 1886.

The defendant having proved the truth of these allegations,

*Held*, that as to the parol agreement to deliver possession by a named date, this being a collateral agreement, and made in consideration that the defendant would enter into the transaction as he did, would, according to the statement of the law by MELLISH, L.J., in *Erskine v. Adeane*, L. R. 8 Ch., at p. 766, have been a binding agreement, notwithstanding the execution of the deed and mortgage, were it not that the conveyance to the defendant containing the ordinary short form covenant for quiet possession, the parol agreement was contradictory to the meaning of this, as shown by the column in the statute containing the extended form of the covenant, or if not contradictory, added another term to the deed, and this was fatal to giving effect to the parol agreement.

*Held*, however, that the forbearance to sue, since the defendant *bona fide* believed he had a good cause of action for the false representations and the breach of the agreement, formed a good consideration for the parol agreement to postpone payments under the mortgage, and the plaintiff was bound by it, and nothing, therefore, being due to the plaintiff, the action must be dismissed.

*O'Gara*, Q.C., for the plaintiff.

*J. J. Gormully*, and *F. MacDougall*, for the defendant.

Ferguson, J.]

[Dec. 14, 1885.]

### BOGART v. TOWNSHIP OF SEYMOUR.

*Medical practitioner—Compensation for services—By-law appointing—Absence of fixed salary—Local Board of Health.*

Action for compensation for medical services, rendered on order of Local Board of Health of defendant township, and of the defendants, the corpora-