life was *prima facie* a beneficial one, giving him, as it did, for his life absolutely, that to which otherwise he had acquired no title. And (ii) the fact of the legal estate being devised to trustees for the use of the petitioner for life, did not materially affect the result,—inasmuch as (*a*) even if it could be rightly considered that on the death of the testator a new tenancy at will as between the trustees and the petitioner was created by implication, nevertheless an additional period of ten years would have to run before the fresh right of entry thus accruing would be barred; but (*b*) sect. 5, subs. 8 of R. S. O. 108, declares that no *cestui que trust* shall be deemed a tenant at will to his trustee in the meaning of the next preceding subsection, and this being so, there is no *terminus a quo* for the period of limitation, and such a case is not covered by the statute.

Gerrard v. *Tuck*, 8 C. B. 231 followed.

J. Fleming, for the appellant.

J. Idington, for the respondent.

BOYD, C.] [Oct. 25.

TRINITY COLLEGE v. HILL.

Opening foreclosure—Innocent purchaser.

When there has been a final order of foreclosure of property mortgaged—although, while yet the mortgagee retains the property, it is not impossible to have the foreclosure opened in circumstances when it would involve great hardship to refuse relief, and the delay is satisfactorily accounted for—yet no case has gone beyond that, and it is a salutary rule to adopt in this country, where land is regarded as an article of commerce, that the claim of the mortgagee to the equitable interference of the Court is forfeited, if before his application the rights of purchasers intervene.

Views expressed by Van Koughnet, C. in *Platt* v. *Ashbridge*, 12 Gr. 107, preferred to the dicta of the M. R. in *Campbell* v. *Holyland*, L. R. 7 Ch. D. 173.

Van Koughnet, for the College.

Bain, for the petitioner.

Hoyles, for the purchaser.

BOYD, C.] [Oct. 25.

YOUNG v. ROBERTSON.

Specific performances—Demurrer for misjoinder of parties—Judicature Act.

Where a demurrer is raised to a statement of claim in an action for specific performance, on the ground that there is no agreement shewn between the parties, whereupon the defendant is made liable to the plaintiff, it is enough if in any aspect of the case the plaintiff may be entitled to some relief.

In the present case the owners of the property contracted to be sold were married women, but they joined their husbands as co-plaintiffs in the action for specific performance of the contract, and a demurrer being raised *ore tenus* on the ground that the suit was wrongly constituted,

Held, inasmuch as the ground of the objection rested on the doctrine of misjoinder of parties, which is not now a ground of demurrer under the practice established by the Judicature Act, an amendment of the record as to parties might be allowed; and it was allowed accordingly on payment of a $5 costs.

Werderman v. *Societe Generale d' Electricite*, L. R. 19 Ch. D. 250 followed.

W. Cassels, for the demurrer.

W. Nesbitt, contra.

[NOTE.—*Werderman Societe* v. *Generale d'Electricite*, is noted in this Journal, *supra*, p. 18.—EDS. L. J.]

Boyd, C.] [Oct. 25.

RE O'BRIEN.

Foreign administration—Private international law—Removal of proceedings from Surrogate Court to this Court—Peremptory writ.

One B. dying domiciled in Portland, Maine U.S.A., R., a creditor of her estate, obtained letters of administration there. Subsequently, S., as appointee of R., and with his consent, applied here for letters of administration to be granted to him by the Surrogate Court here. E., however, residing at Toronto, and as next of kin to B., also applied here for letters of administration to B.'s estate. B. was at the time of her death entitled to certain monies now in this Court. S. now applied to have the matter transferred from the Surrogate Court into this Court, or for a writ of prohibition to the judge of the Surrogate Court preventing him granting