mortgage. The sale was of a reversionary interest, and took place in 1888, and the plaintiff was immediately notified of the sale, and took legal advice, and was informed that the sale might be impeached, but she took no steps until 1897, about eight months after the reversion had fallen into possession. The Court of Appeal, without calling on the defendant, held that the plaintiff was barred by her laches.

REPORTS AND NOTES OF CASES.

Dominion of Canada.

SUPREME COURT.

Ont.] BINGHAM *v.* MCMURRAY. [Nov. 29, 1899.

Contract—Sale of patent—Future improvements.

By contract under seal M. agreed to sell to B. and S. the patent for an acetylene gas machine for which he had applied and a caveat had been filed and also all improvements and patents for such machine that he might thereafter make, and covenanted that he would procure patents in Canada and the United States and assign the same to B. & S. The latter received an assignment of the Canadian patent and paid a portion of the purchase money, but when the American patent was issued it was found to contain a variation from the description of the machine in the caveat and they refused to pay the balance, and in an action by M. to recover the same they demanded, by counterclaim, a return of what had been paid on account.

Held, reversing the judgment of the Court of Appeal, that the agreement was not satisfied by an assignment of any patent that M. might afterwards obtain; that he was bound to obtain and assign a patent for the machine described in the caveat referred to in the agreement, and that as the evidence shewed the variation therefrom in the American patent to be most material, and to deprive the purchasers of a feature in the machine which they deemed essential, M. was not entitled to recover.

Held, further, GWYNNE, J., dissenting, that as B. & S. accepted the Canadian patent and paid a portion of the purchase money in consideration thereof, and as they took the benefit of it, worked for their own profit, and sold rights under it, they were not entitled to recover back the money so paid as money had and received by M. to their use. Appeal allowed with costs, and cross-appeal dismissed.

Nesbitt, Q.C., and *Biggar*, for appellant. *W. B. Raymond*, for respondent.