

judgment and that C. would now carry out the purchase.

Held, that the mere payment of money as directed by a judgment is not a bar to an appeal from that judgment by the party making such payment, and mere obedience to a judgment, not such as to signify conclusive acceptance of its terms, does not destroy the right of appeal, and the repayments of the deposits involve nothing inconsistent with the relief which the corporation seeks upon its pending appeal and in no wise signify a conclusive submission to the judgment appealed from.

Held, also, that no change in attitude upon C.'s part at this stage of the case could debar his co-defendants (the corporation) from taking steps by appeal to relieve themselves from an onerous judgment which they allege to have been pronounced in error. The motion was dismissed.

Armour, K.C., for the appeal. *W. C. Mikel*, contra.

Magee, J.]

WILSON v. MCGINNIS.

[June 21.]

Division Courts—Service of summons.

Except in the few special cases provided for by the Division Courts Act the bailiffs of the Courts have the right to serve summonses, and a plaintiff is not entitled as of right to effect service himself.

Mandamus to a Division Court clerk to compel him to give a summons to the applicants for service refused.

W. H. Blake, K.C., for the application. No one contra.

Britton, J.]

IN RE CHARLES TUCK.

[June 21.]

Will—Construction—Gift of personal property—"Before receiving"—Rule in Shelley's case.

A testator left to his wife his lands for her life together with "all my household furniture, personal property, to be for her use and behoof during her natural life in lieu of dower. . . . All the personal property . . . that may be in possession of my said beloved wife at her decease and not otherwise disposed of, shall be sold by my executors . . . and the proceeds . . . equally divided among my daughters as being part of my estate."

Held, that the widow took absolutely all the personal property which she appropriated to her own use and used up dur-