

Prac. Cases.]

NOTES OF CANADIAN CASES.

[Prac. Cases.]

Armour, J.]

[Sept. 11.]

MIDDLESEX ELECTION PETITION (DOM.)

WALKER V. ROSS.

Extending time for trial—Discretion of judge—
38 Vict. (D.) ch. 10, sect. 2.

An application to extend the time for the trial of the Election Petition. It was conceded on both sides that more than six months had elapsed from the filing of this petition before this application was made.

Held, that the provision of 38 Vict. cap. 10, sect. 2, that the trial of every election petition shall be commenced within six months from the time when such petition has been presented, and shall be proceeded with *de die in diem* until the trial is over, unless on application, supported by affidavit, it be shown that the requirements of justice render it necessary that a postponement of the case shall take place, is directory only.

A judge has a discretion and a power to extend the time for proceedings to the trial of the petition, although the six months has expired before he is applied to.

Order made extending the time for six months.

Scott, Q.C., for the petitioner.

Bethune, Q.C., for the respondent.

Chy. Div.]

[Sept. 15.]

DARLING V. CULLATTON.

Interpleader—Right of sheriff to order—
Delay—Discretion.

An interpleader matter. The sheriff seized the goods in question on the 31st of January, 1883, and on the 1st of February was notified of a claim by an assignee of the judgment debtor, (the assignee being an officer employed by the sheriff,) and on the same day the plaintiff's solicitors directed him to sell. The sale took place on the 12th of February, and on the 13th of February the sheriff received the money arising therefrom. On the 26th of February the sheriff informed the plaintiff's solicitors that the solicitors for the assignee forbade him to pay over the proceeds, and on the 2nd of March the plaintiff received a notice from the assignee's solicitors that they were instructed to sue him. On the 5th of March notice was given of the application for an interpleader order. The sheriff retained in his hands the proceeds of the sale, and in his affidavit, filed on the interpleader appli-

cation, referred to a conversation which he had with the claimant's solicitor, in which the latter told him that the claimant did not propose to claim the goods or interfere with their sale, but would contest the right of the plaintiff to the money arising from the sale, which was to remain in the plaintiff's hands. The sheriff also swore that he related what the claimant's solicitor had said to the plaintiff's solicitor. The sheriff's excuse for his delay, from the 13th of February to the 5th of March, was that he did not understand that it was his duty to take the initiative.

An interpleader order was made by Mr. WINCHESTER, sitting for the Master in Chambers, but was set aside upon appeal to PROUD-FOOT, J.

Upon appeal by the plaintiff to the Divisional Court of the Chancery Division:

Held, that the plaintiff sold with the consent of both parties, and did not therefore improperly exercise his own discretion, so that the contest properly arises as to the proceeds of the sale.

Held, that the delay, from the 13th February to the 5th March, no opportunity of trial being lost, was not unreasonable.

Held, that the fact of the claimant being an officer in the employment of the sheriff, made no difference.

Per BOYD, C.—The disposition of the Court is to be more liberal in relieving the plaintiff now than formerly.

Clement, for the sheriff appellant.

Hoyles, for the claimant.

J. A. Paterson, for the execution creditor.

Ferguson, J.]

[Sept. 17.]

RE CRAIG.

Application under V. and P. Act, (R. S. O. cap. 109) — Order thereon — Subsequent remedy where purchaser fails in his contract.

An order made upon an application under the Vendors' and Purchasers' Act upon the 21st of May, 1883, besides dealing with the title to the land in question, contained a clause directing the purchaser to carry out his contract to purchase forthwith. The purchaser failed to carry out his contract.

On the 17th September, 1883, A. C. Galt, for the vendor, moved, on notice, for an order directing the purchaser to pay his purchase money into Court, and in default of his so do