

[Prac.]

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NOTES OF CANADIAN CASES.

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Proudfoot, J.]

[Sept. 21.]

RE BOUSTEAD & WARWICK.

Vendor and Purchaser—R. S. O. c. 109, s. 3—Solicitor's abstract—Paper title—Title by possession—Declaration evidence—Affidavit evidence—Viva voce evidence—Title by decree—Specific performance.

B. agreed to sell certain land to W., and in the agreement it was provided that "the examination of title to be at the expense of the purchaser, who is to call for only those deeds and papers in my possession or under my control." W. demanded a solicitor's abstract which B. declined to furnish, and on the examination of the title it was discovered that a deed was missing which had not been registered, so that a clear paper title could not be made out. B. then offered evidence of a title by possession by declarations under 37 Vict. c. 37 (D.), which W. declined to accept.

Held, on an application under the Vendor and Purchaser Act, R. S. O. c. 109, s. 3, that B. was bound to furnish an abstract, and that W. was not bound to accept declaration evidence of the title by possession, and the vendor was directed to obtain affidavits from the declarants when the purchaser could cross-examine the deponents, and if not satisfied with that, although he might be thought unreasonable, the purchaser was entitled to have the evidence taken *viva voce* and have his title sanctioned by a decree, in which case and for that purpose leave was given to him to institute a suit for specific performance, all costs of which were reserved until the hearing.

Mills, for the vendor.

W. M. Hall, for the purchaser.

Proudfoot, J.]

[Sept. 21.]

HOSKIN V. THE TORONTO GENERAL TRUSTS CO.

Railway Co.—Expropriation—Award—Compensation—Price of land taken and depreciation to remainder—Who entitled to on death of land owner—Trustee of real estate or executor—Conversion.

P., being the owner of certain lands, was served by a railway company with notice of expropriation, and tendered \$3,635 for right of

way and damage, which he refused. Subsequently, on the application of the company, and with the consent of P.'s solicitor, the county judge made an order fixing the amount of security to be given for damages and the price of the land at \$7,300, and giving the company possession upon their paying that amount into a bank to the joint credit of P. and the company. The money was paid in pursuant thereto. An arbitration was then proceeded with, and the compensation to be paid was fixed by the award at \$3,516, being \$924 for the land taken and \$2,592 for depreciation in value to the remaining land. Proceedings and appeals as to the costs kept the matter open, and the money remained to the credit of the joint account until P. died, after making his will, by which he devised all his real estate to a trustee, and his personal estate, after certain specific bequests, to his executors.

The plaintiff proved the will as executor, and the defendants were appointed by an order of court trustees in place of the trustee named in the will. Upon a special case for the opinion of the court as to whether the plaintiff, as executor of the personal estate, or the defendants, as trustees of the testator's land, was or were entitled to the \$3,516, or any part thereof, or who should pay the costs of the case. It was

Held that notice to treat was given, a claim made by the landowner refused by the company, money paid into court and possession taken by the company. These circumstances, under the authority of *Nash v. The Worcester Improvement Commissioner*, 7 Jur. N.S. 973, would entitle the landowner to have specific performance against the company, and the result follows that the land was converted into money, and the plaintiff entitled to the \$3,516 and costs of the special case.

McMichael, Q.C., for plaintiff.

Edgar, for defendants.