

Full Court.]

[Jan. 23.]

AUCHTERLONY v. PALGRAVE GOLD MINING CO.

Mortgagor and mortgagee—Agreement for compromise of claim—Discretion of Judge at Chambers to order stay—Held properly exercised.

Plaintiffs having obtained orders for judgments in two foreclosure suits, an agreement was entered into in writing between the parties for a settlement of the suits, extending the time for payment, and providing for the payment of different sums at different dates, and providing that when the defendant company paid the balance of the amount due upon the judgments, the plaintiff should at once pay to F. the difference between the sum of \$15,000 and the amount of the judgments. The defendant company made one payment, but failed to make the other within the time agreed upon, and plaintiff proceeded to enforce the judgments and advertised the properties for sale. Before the day of sale defendant offered to pay the balance due, but in making such payment, claimed the right, under a verbal agreement, to pay the difference between the \$15,000 and the balance due on the judgments by a cheque of F., that sum being at once payable to him by plaintiff under the terms of the written agreement. Plaintiff having refused to accept payment in this way, an order was obtained from a Judge at Chambers staying the sale for a period of 90 days to enable the rights of the parties to be ascertained.

Held, HENRY, J., dissenting, that the order for the stay was clearly within the discretion of the Judge who granted it, and that such discretion was properly exercised.

R. E. Harris, Q.C., and C. H. Cahan, for plaintiff.

Jos. Kenny, for defendant.

WEATHERBE, J., }
In Chambers.

[Feb. 6.]

LOWTHER v. LOGAN.

Dominion Controverted Election Act—Time for presenting petition—When last day falls on Sunday, the following day too late.

In this case the election was held on June 23rd, and the petition against the member elect was presented on August 3rd. R.S.C. c. 20, s. 5, as amended, requires the petition where there has been a contest to be presented within forty days after polling. The fortieth day fell on Sunday and the petition was presented the following day. The question as to whether the presentation was in time was raised by preliminary objection.

Held, that the presentation was too late. S. 7, sub-secs. 26 and 27 of the Interpretation Act relate to procedure. *Dechene v. The City of Montreal*, App. Cas. 1894, p. 640, is binding.

H. Mellish, for respondent.

J. A. Chisholm, for petitioner.