

Master's Office.]

NOTES OF CANADIAN CASES.

[Ct. Appeal.]

interest was limited to six years. See further on this: *Brocklehurst v. Jessop*, 7 Sim. 438; *Re Stead's Mortgaged Estates*, 2. Ch. D. 713, and *Henry v. Smith*, 2 Dr. War. 381. The plaintiff therefore can only recover six years arrears of interest on each of the above loans.

The plaintiff is entitled to the amount paid by him for taxes to redeem the lands. The original mortgagee had obtained a tax deed of the property, but he was disqualified as a mortgagee to purchase it for his own benefit: *Scholfield v. Dickinson*, 10 Gr. 326; *Smart v. Cottle*, 10 Gr. 59; *Kelly v. Macklem*, 14 Gr. 29; but the money paid by the mortgagee to redeem the lands from such taxes is a lien on the land, and the mortgagee has a right to claim the same as a just allowance, with interest at six per cent. from the date of payment.

The plaintiff also claims to be allowed the amount paid by Barrett, the trustee for mortgagee company on a judgment against him for calls on thirty shares of the Electric and Hardware Company assigned by the defendant, Ledyard, to Barrett as collateral security for the original loan. When the stock in this company was assigned to Barrett sixty per cent. of it had been paid up, but subsequent calls were made on which Barrett was sued and judgment obtained against him about 4th April, 1882. Barrett paid this judgment, and the plaintiff now claims to add this to his debt as a lien on the lands.

There is no case made in the pleadings, for this claim, and the plaintiff has not yet obtained any assignment of the stock or of the judgment from Barrett, and Barrett is no party to this suit. The plaintiff's counsel, however, states that he can procure a formal assignment of the stock and judgment from Barrett.

Apart from other substantial reasons which it is unnecessary to refer to at length, I think I am precluded by the terms of the order of reference from allowing this to the plaintiff as "an amount due to the plaintiff in respect of the loans to the defendant, Thomas D. Ledyard," or as an amount for which the plaintiff is entitled to a lien on the lands and premises in question.

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE
LAW SOCIETY.

COURT OF APPEAL.

[March 4-

DOBELL V. ONTARIO BANK.

Sale of Timber.

The judgment of the Court below was reversed on the ground that the appellants (the bank) were not bound by the contract for sale of the deals between R. and the plaintiffs.

S. H. Blake, Q.C., and *W. H. Walker*, for applicants.

Robinson, Q.C., for respondents.

[March 4-

VANSICKLE V. VANSICKLE.

Will, Construction of.

The judgment of *FERGUSON, J.* was reversed. Per *SPRAGGE, C.J.O.*, and *MORRISON, J.A.*, the judgment on the construction of the will was right. But the evidence established the fact that the testator was a trustee of the land in question for the defendant claiming as devisee.

Osler, Q.C., and *Smyth* (Brantford), for appeal.

Robertson, Q.C., and *Robertson*, contra.

[March 4-

BRAYLEY V. ELLIS.

Chattel mortgage—Preference.

R. S. O. cap. 118.

On appeal from the Chancery Division (1 O. R. 119), the judges of this Court being equally divided, the appeal was dismissed with costs.

Gibbons, for appeal.

W. Cassels, contra.