

DIVISIONAL COURT.]

[March 3.

ARMSTRONG v. LYE.

Equitable assignment—Attorney for sale of lands—Authority to attorney to pay an advance out of proceeds of sale—Attorney subsequently becoming purchaser—Lien for advance on land—Personal obligation.

R. being the owner of certain lands, subject to a mortgage to G., and to certain charges to B. and C., and which had been directed to be sold under proceedings taken by G., defendant agreed with him to pay off G.'s mortgage within a year, and in the meantime to secure G. collaterally to the extent of \$10,000, R. to pay defendant \$500 as well as G.'s mortgage within three months, failing which, he created defendant his attorney irrevocable for the sale of the land, authorizing him to retain one-third of the net proceeds after payment of G. and B. and C.'s claims. R., who also owed H. \$6,000 under a bond therefor, signed an instrument whereby he agreed that in case any person should make H. a loan or advance to the extent of \$1,200 and interest, the same could be charged by way of mortgage against the said lands, and authorized defendant to pay the same out of R.'s share in the surplus proceeds of the sale, after paying G. and B. and C.'s claims, and which was to be applied on the \$6,000 bond. H. procured an advance of \$459 from plaintiff, from whom she had previously borrowed \$500, on defendant's agreeing to pay the same out of the said surplus proceeds as soon as he received them. These instruments attached together were deposited in the proper Registry Office, upon an affidavit of execution made as to the first of them. Subsequently defendant became the purchaser of R.'s equity of redemption in the lands.

Held, affirming the judgment of BOYD, C., at the trial, that the plaintiff was entitled to lien on the lands for the amount of his advance; but reversing his judgment (STREET, J., dissenting), that he was also under the circumstances, entitled to a personal order against the defendant therefor.

Watson, Q. C., and Ruddy, for the plaintiff.

Wallace Nesbitt, for Lye.

Hilton, for Lye and Rankin.

Walter Reade, for Mrs. Hutchins.

BOYD, C., FERGUSON, J., }
ROBERTSON, J. }

[April 7.

ARDAGH v. COUNTY OF YORK.

Revivor—Praeceptum order—Delay in prosecution of action—Change of interests

A statute passed in 1889, gave persons making certain claims a right to bring an action within a year. The plaintiffs brought such an action within the year, but did not proceed with it, and no proceeding was taken by either party, after the delivery of the defence in June, 1890, until one of the plaintiffs having died in January, 1895, the action was revived in February, 1896, by a praecipe order. In the meantime changes had taken place in the interests of the parties.

Held, that the order should not be interfered with. The old practice had