

Chan. Div.]

NOTES OF CASES.

[Cham.]

Boyd, C.]

[Feb. 15.]

BARKER V. LEESON.

*Chattel mortgage—Sale without renewal—Creditor—Interpleader—Setting up new title.*

A chattel mortgage which has expired by effluxion of time, under R. S. O. cap. 119, sec. 10, and has not been renewed or refiled, ceases to be valid as against all creditors of the mortgage then existing; and a sale on default in good faith made by the mortgagee, though good as between the parties to the mortgage, cannot establish the mortgage as against creditors, but passes to the purchaser a title subject to the rights of any creditor who take steps to follow the goods.

A creditor to be within the meaning of the above section need not be a judgment creditor.

Remarks upon the policy of the chattel mortgage act.

In an interpleaders issue the claimant relied upon his purchase and bill of sale from the chattel mortgagee, and the issue was found against him.

*Held*, that he could not afterwards set up another title in the same issue, but that this was matter for a substantive application to the Court.

*W. S. Gordon* for execution creditor.

*Patullo* for claimant.

J.]

[Feb. 22.]

IN RE MACNAB.

*Vendor and Purchaser's Act—Will—Construction—Power of Sale with executor's consent—Practice—Parties.*

A testator devised to his wife during the term of her natural life a parcel of land, with power of sale at any time during her life, subject to consent of his executors. Testator appointed three executors, one of whom was deceased. A contract for sale having been entered into, it was objected by the purchaser that the consent of the surviving executors would not confer a valid title.

*Held*, 1. that in the state of the authorities, the title was not one that could be forced on a purchaser.

2. That under such general power the land could be sold in parcels.

3. That on an application to the Court under *Vendor and Purchaser's Act*, the only parties

who need be represented, are those who would be parties to a suit for specific performance, and mortgagees, who had been made parties to the application, were dismissed with costs.

*H. Cassels* for petitioner.

*J. Pearson* for purchaser.

*Moss, Q.C.*, and *Crickmore* for mortgagees.

## CHAMBERS.

Mr. Dalton, Q.C.; Boyd, C.]

[Jan. 18, 30.]

LAPIANTE V. SCAMEN.

*Vendor and purchaser—Title—Vesting order—Depreciation.*

*Held*, that a purchaser at a sale of lands under a decree of the Court upon the usual conditions, is not bound to accept a vesting order.

*Held* also, that when the plaintiff, the vendor, was first mortgagee, and the purchaser, a defendant, was second mortgagee of the interest of A. S., who was out of the jurisdiction and refused to execute a conveyance, the purchaser could not be compelled to take a vesting order or a conveyance under the power of sale contained in the plaintiff's mortgage.

*Held* also, that until a good title is shown the purchaser is not bound to accept possession even though offered to him by the vendor, and that the purchaser was entitled to a reference to the Master to ascertain the amount of the depreciation, if any, caused by the property being left vacant and neglected pending the investigation of the title, although the vendor had offered to give possession to the purchaser pending the investigation of the title.

*Beck*, for plaintiff, moving.

*Patterson*, for the purchaser.

Mr. Dalton, Q.C.]

[Feb. 1.]

RE CLARKE.

*Solicitor and Client—Taxation—Retainer.*

In this case the order for the taxation of the solicitor's bill contained a clause ordering payment of the amount taxed within 21 days from the taxation. This was a motion to set aside the order.