The effect of such a payment depends upon the intention of the party paying, and the payment of the rent and costs in this case could not operate by force of R.S.O., c. 143, ss. 17-22, to permit the landlord to retract his forfeiture, without regard to the intention of the tenants, and without any request on their part to be relieved from the forfeiture.

These sections are applicable simply to an action for the recovery of the demised premises. Had the action been brought for that alone, an implication might have arisen from the payment of rent and costs that the tenants intended to seek to be relieved from the forfeiture; but not so where the action was also brought for the rent in arrear, more especially as the demised premises were vacant land, the tenants not being in actual possession.

Held, also, on the evidence, that there was no intention on the part of the tenants to seek to be relieved from the forfeiture.

Held, further, that the landlord could not get rid of the forfeiture unless both tenants concurred in seeking relief from it

Decision of BOYD, C., reversed.

W. H. Blake for the plaintiff.

Alan Cassels for the defendants.

Chancery Division.

Full Court.] [Mar. 29.

O'BRIEN *v.* SANFORD.

Employer's liability—Employment of infant in elevator.

Action against employer.

The plaintiff, a lad under twelve, was hired to work an elevator for the defendant company. A larger boy who had been in charge before was detailed for a few hours one afternoon to go up and down with the plaintiff, so as to show him how to raise and lower the hoist. The elevator was worked by ropes on the outside of the cab or frame, which were handled by the person standing within through a square opening cut in the framework. The plaintiff was cautioned by the bigger boy against putting his head out at this place when the hoist was going.

The elevator stopped when going up, and the plaintiff put his head out of the aperture to see what stopped it, when, the elevator starting again, the plaintiff received the injuries complained of. On this evidence the plaintiff was nonsuited.

Held, that the nonsuit should be set aside, and a new trial ordered.

Per BOYD, C.: The employment of a child under twelve to work an elevator for the uses of a manufacturing concern is made illegal by the Factory Act; and for this reason the employer has to exercise more than ordinary precautions for the well-being and safeguarding of minors who have been put into factory work contrary to the prohibition of the Legislature.

Lynch-Staunton for the plaintiff.

Blackstock, Q.C., and *McKay* for the defendant.

RE MARRIOTT, MARRIOTT *v.* MCKAY.

Will—Husband and wife—Election.

A testator by his will devised his real estate to his executors to be by them sold, and four per cent. of the proceeds paid to his widow, and the balance invested and the income paid to his widow during her life, and afterwards the proceeds to be divided as directed; and he gave the rents, until the real estate was sold, to his widow

Held, that the widow was put to her election. She could not claim dower and to be tenant of the freehold at the same time.

Hoyles, Q.C., for the widow.

J. A. Robinson for the next of kin.

THOMPSON *v.* WRIGHT.

Employer's liability—Knowledge of employer of danger of employee.

The plaintiff, a lad of 17 years of age, worked at a stamp machine in the defendant's factory. Part of his duty was to clean the upright part from oil which ran down from oil holes over the shafting. There was a space of about twelve inches between this upright and the cogwheel, and to clean when the wheel was in motion was very dangerous. Being refused cotton waste and even rags for this work, he finally took to using pieces of bagging, as the only thing he could get. On the occasion of the accident, he had wrapped a piece about his hand, but one end, flapping loose, got caught in the cogs and the plaintiff lost his hand.