

Chan. Div.]

NOTES OF CANADIAN CASES.

[Prac.]

money, with full power to lease or sell the same, etc.

The purchaser having failed to carry out his purchase, and having relinquished any claim he had to the farm, the trustee subsequently exchanged the farm for a city lot. On an agreement for a sale of the city lot the purchaser declined to accept it, and raised the objection that the trustee had no power under the settlement to sell and convey. On an application by the trustee under the Vendors' and Purchasers' Act R. S. O. c. 109, it was

Held, that there was a direction to invest in real estate, and following *Joint Stock Discount Co. v. Brown*, L. R. 3 Eq. 139, that "investing" means the "actual purchase," and the purchaser's objections were overruled with costs.

Robinson, Q.C., for vendor.

McMichael, Q.C., for purchaser.

Boyd, C.]

[May 16.]

BEATTY V. O'CONNOR.

Action for account—Small balance—Costs.

In an action by a mortgagor, against the executors of a mortgagee who had sold the mortgaged premises under the power of sale in the mortgage, for an account of the proceeds of the sale a small balance of \$10 was found in his favour. Plaintiff having made certain charges which he failed to substantiate, and not having proved that an account was demanded and withheld from him; and certain special matter pleaded by the defendants being found against them,

Held, on further directions, neither party entitled to costs.

Lennox, for plaintiff.

Moss, Q.C., and *G. W. Lount*, for defendants.

PRACTICE.

Mr. Dalton, Q.C.]

[May, 23.]

PERRY V. PERRY.

Action on covenant in mortgage—Setting aside service of writ—Ontario Mortgage Act, 1884.

The plaintiff gave to the defendant a notice of sale under the power of sale in a certain mortgage and also began an action against the

defendant upon the covenant of payment contained in the same mortgage.

The notice of sale was dated 2nd May, the writ was issued on the 3rd May, and both were served on the defendant on the 3rd May. No order was obtained permitting the action to be commenced. Upon motion to set aside the service of the writ as contrary to the provisions of the Ontario Mortgage Act, 1884, 47 Vict. c. 16, O.,

Held, that the object of the statute is to prevent all other proceedings while the notice of sale is running and it is not necessary under the statute, to fulfil the very words of it, that one of the acts should be prior to the other.

Service of writ set aside with costs.

Mulock, Tilt, Miller and Crowther, for the motion.

Malloy, contra.

LAW STUDENTS' DEPARTMENT.

It may be of interest to students, and the profession generally to know that the number of gentlemen who presented themselves for the recent final examinations were, for Call thirty-three, for Certificate of Fitness thirty-three, of which twenty-three passed for Call, and twenty-four for Certificate of Fitness. We concur in the hope expressed by *Cameron, C.J.*, before whom these young gentlemen were sworn in "that their country will be able to provide them with lots of business without involving itself in a huge lawsuit."

EXAMINATION QUESTIONS.

FIRST INTERMEDIATE—PASS.

Equity.

1. A, by will, bequeaths a fund to the clergy of a certain denomination, in a certain diocese, in such proportions as the Bishop shall appoint; the Bishop fails to make any appointment. Will the clergy take any, and if so, what interest in the fund, and why?

2. What difference is there, so far as the beneficial interest of the devisee is concerned, between a devise of an estate in trust to pay debts of the testator and a devise of an estate charged with payment of the debts of the testator? Explain.