

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

a certain sum for ground rent, and his application was duly forwarded to the Commissioner of Crown Lands; but, owing to a defective survey, it was impossible then to convey the berths. Subsequently the survey difficulty was removed, and his application as to one of the berths was accepted in the year 1861, but he having removed to the United States never received any notice of such acceptance. In 1881 he first heard of the acceptance, and in 1884 sold all his interest therein for \$4,000. B. afterwards became entitled by subsequent assignments for value to all McA.'s interest, the assignment being duly filed in the Crown Lands Department. McA. and B. in 1884 joined in a petition of right for the issue of the license, and the Attorney-General demurred to the same.

Held, that there was no laches on the part of McA. in not enforcing a right which he did not know existed, and there was no intention on his part to abandon the right when he did become aware of it, as he treated it as a valuable asset. As between subjects a delay of four years would probably be, under ordinary circumstances, a defence to a claim for specific performance; but if a vendor was aware that the purchaser was treating the right as existing, making sale of it for valuable consideration, and made no objection, he would not be allowed to set up such a defence.

Held, also, that as the assignments were filed in the Crown Lands Department, and the Commissioner had the power of forfeiting the claim for non-payment and did not do so, if the rule between subjects were to apply it would not be a bar in this case.

Seem, it may be doubted whether the same rule should apply to the Crown, and whether the subject should not have the right to a completion of the purchase at any time before it has been forfeited.

Irving, Q.C., for the demurrer.

Lash, Q.C., and *Cassels*, Q.C., contra.

Ferguson, J.]

[Sept. 7.]

HARGRAFT V. KEEGAN.

Will—Devise—Illegitimate child as legatee—Death of illegitimate child during life of testator leaving legitimate issue—Lapse of legacy—R. S. O. c. 106, sec. 35.

R. B. by his will devised his property to executors upon trust as follows:

"Fifthly, in trust to pay to each of my two surviving children, F. A. B. and M. A. B., the sum of \$1,000.

"Sixthly, in trust after the payment of the said debts, funeral and testamentary expenses, and the said legacies to pay to my four sisters (naming them) and their female heirs respectively, equally share and share alike all the est, residue and remainder of the moneys arising from the sale of my said estate, save and except the sum of \$200 hereinafter bequeathed to my said executors."

F. A. B. and M. A. B. were illegitimate children, and M. A. B. married and died during the lifetime of the testator, leaving children surviving.

In a suit for administration and construction of the will it was

Held, that the words "child or their issue," in R. S. O. c. 106, sec. 35, do not apply to an illegitimate child, and that the legacy lapsed.

J. Hoskin, Q.C., for the infants.

Riddell, for the residuary legatees.

Porteous, for the executors.

Boyd, C.]

[Nov. 4.]

TAYLOR V. MAGRATH.

Trust for sale—Wilful default—Delay of many years—Account rendered—Appropriation.

C. M. invested money of H. in a third mortgage of the E. property. Afterwards, in 1862, the property was put up for auction under a decree for sale at the suit of the first mortgagor. A. M. held the mortgage on the property next after the first mortgage. Finding that owing to the great depreciation of the value of the E. property, it would, if sold then, scarcely fetch enough to pay off the first mortgage, it was agreed between C. M. and A. M. that C. M. should, out of his own moneys, buy in the property by paying off the first mortgage, and then hold the same in trust to sell, and out of