

Chan. Div.]

NOTES OF CANADIAN CASES.

[Prac. Cases]

all contentions to the contrary, viz., "There is nothing [in the B. N. A. Act] to raise a doubt about the power of the Dominion Parliament to impose new duties upon the existing Provincial Courts, or to give them new powers as to matters which do not come within the classes of subjects assigned exclusively to the Legislatures of the Provinces."

The line of reasoning in *re Niagara election case*, 29 C. P. approved of.

*W. Nesbitt* for the appellants.

*G. H. Watson* contra.

Divisional Court.]

Sept. 29.

MARTIN V. MILES.

*Right of tenant to redeem mortgage.*

The decision of Wilson, C. J. C. P. D. noted *supra*, p. 228-9, reversed so far as he held, that to grant or withhold redemption was a matter of discretion with the Court, and in the exercise of such discretion, withheld redemption.

*Held* now, the judgment should be for redemption by the plaintiff and with costs of action, if the tender before action was sufficient; if not sufficient, the costs should be added to the mortgagee's debt, except the extra costs occasioned by disputing the right to redeem, which should be deducted from what the plaintiff is to pay; and there should be a reference as to the sufficiency of the tender if the parties failed to agree.

The equity of redemption is an estate in the land, and in all cases where the right to redeem has not been barred by the Statute of Limitation, it exists as a right, and an estate over which the Court has no discretionary power. One will search the English books in vain to find anything upholding the view that the Court exercises discretionary power in granting redemption to a person interested in the equity of redemption.

*Arnoldi* for the appellant.

*Beck* for the respondent.

## PRACTICE CASES.

Mr. Dalton, Q.C.]

[Sept. 3.

HUYCK V. PROCTOR.

*Judgment against executors de bonis propriis.*

The plaintiff sued upon two promissory notes made by the defendant's testator. To this the de-

fendants pleaded, 1st, that they never were executors; 2nd, *plene administravit*. Issue was joined, and upon the trial a verdict was found for the plaintiff for \$703.77. Upon this a judgment was entered for the debt and costs to be levied of the goods of the testator in the hands of the executors if they have so much thereof, and if not then to be levied of the proper goods and chattels of the defendants.

This was a motion to amend the judgment and writs of execution issued pursuant thereto.

*Held*, that the verdict on the record as framed warranted the judgment entered.

*Aylesworth*, for the defendants.

*Watson*, for the plaintiff.

Mr. Dalton, Q.C.]

[Sept. 10.

GRAND JUNCTION RY. V. COUNTY OF PETERBORO'.

*Staying proceedings where costs of former proceeding unpaid.*

In 1879 the Grand Junction Railway obtained from the Court of Queen's Bench a rule for a *mandamus* to enforce the delivery of bonds by the defendants to the amount of \$75,000, pursuant to a by-law of the defendants to aid in the construction of the plaintiff's road. On appeal to the Court of Appeal this Rule was discharged, and on appeal to the Supreme Court of Canada the Court of Appeal's judgment was affirmed with costs against the plaintiffs. Since then the road has been completed, but the costs of the above proceeding have not been paid. This present action is brought in the name of the Grand Junction Railway and the Midland Railway to recover the aforesaid sum of \$75,000 in money.

Upon motion to stay all proceedings in this action till the costs of the former proceeding shall have been paid:

*Held*, notwithstanding that new circumstances have arisen, and the proceeding is not the same as the first proceeding, nor grounded upon exactly the same facts, and notwithstanding that the Midland Railway Company are now joined as plaintiffs, the attempt to proceed in this action without first paying the costs of the former action is vexatious, and the order asked for must be made: following *Cobbett v. Warner*, L. R. 2 Q. B. 108.

*McPhillips*, for the plaintiffs.

*Marsh*, for the defendants.