

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

Boyd, C.]

[January 14.]

OMNIUM SECURITIES COMPANY V. RICHARD-
SON.*Specific performance—Absence of common intention
—Parol evidence.*

Action for specific performance of an alleged contract for the sale of lands. On June 28th, 1883, the defendant wrote to the plaintiffs, who were mortgagees of the land in question with power of sale: "I have considered the matter of our conversation when you were with me, and have come to the conclusion to offer you \$800 for the property, and then, I doubt, if I am doing justice to myself, because as long as I do not get a customer, the interest and taxes would soon eat up any apparent profit I may see in it." The plaintiffs, in a letter of July 2nd, 1883, replied: "We have your favour of the 28th ult., offering \$800 for the property (describing it). Although the price is much less than the amount due us on foot of our mortgage, we have concluded to accept your offer."

The plaintiffs alleged the contract was to purchase for \$800, payable forthwith. The defendant denied any such agreement to purchase. The evidence showed that at the prior conversation referred to in the letter of June 28th, the defendant was seeking to buy on five or seven years' credit, and the reference to "interest and taxes" in that letter confirmed the defendant's contention that this was what he contemplated.

Held, that as the acceptance by the plaintiffs was as of a cash offer, but this was not contemplated by the defendant, who did not intend to make any such offer, the contract could not be specifically enforced, the parties differing in their understanding of it.

A letter containing an offer written "without prejudice" means: "I make you an offer; if you do not accept it, this letter is not to be used against me." But when the offer is accepted the privilege is removed.

Nesbitt, for the plaintiff.

Ross, for the defendant.

Proudfoot, J.]

[January 17.]

MOOREHOUSE V. BOSTWICK.

*Dissolution of partnership—Assignment of interest
by one partner to continuing partner—Priority
of separate and partnership creditors.*

W. J. M. dissolved partnership with L. A. M., and assigned all his interest in the business to him, taking a covenant that he would pay off the creditors of the firm. L. A. M. subsequently became insolvent, and made an assignment of all his estate and effects to the defendant in trust for creditors. L. A. M. never made himself separately or exclusively liable to the creditors of the partnership. Defendant, as such assignee, being about to distribute the estate ratably between both partnership and separate creditors, the plaintiff, a separate creditor, on behalf of himself and the other separate creditors, brought this action to compel the defendant to give priority to the separate creditors, and on a motion for injunction, which was, by consent of counsel, turned into a motion for judgment, it was

Held, that the assignment by W. J. M. to L. A. M. of his interest in the business, without the consent of the partnership creditors, or without their agreeing to look to L. A. M. for payment, or his making himself separately liable to pay them, made such business his separate estate, and that his separate creditors are entitled to priority over the partnership creditors; and that only the surplus after payment of the separate creditors goes towards paying the partnership creditors.

Moss, Q.C., for plaintiff.

J. H. Macdonald, for defendant.

Boyd, C.]

[January 19.]

THE BANK OF TORONTO V. THE COBOURG,
PETERBOROUGH AND MARMORA R. W.
Co.*Railway debentures—Negotiable instruments—
38 Vict. c. 47, O.*

By 38 Vic. c. 47, O., the defendants' railway was authorized to issue \$300,000 of preferential debentures, to be a first charge on all the property of the railway, the holders of which debentures, it was enacted, might, in default