

Chan. Div.]

NOTES OF CANADIAN CASES.

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tion. It rests in the discretion of the Court to grant it or refuse it, according to circumstances. The lease must be a beneficial one to the tenant.

Held, in this case, where a tenant for years under a demise made subsequent to a mortgage, sought to redeem the lands in the hands of the mortgagee, who had obtained an order for foreclosure in a suit to which the present plaintiff was not a party, the lease being a beneficial one, the plaintiff had a right to redeem, in the event of the mortgagee refusing to accept him as a tenant.

Held also, although the plaintiff had at one time, before commencing this action, offered to give up possession on payment of \$40, yet inasmuch as this offer had not been accepted by the defendant or acted upon at any time, the plaintiff had done nothing to waive or prejudice his rights of redemption as such lessee by such offer.

After action brought for redemption, however, the defendant (the mortgagee who had foreclosed) offered to confirm and adopt the lease held by the plaintiff. Before action brought the defendant had refused so to do, and had, indeed, sold the property to a purchaser, said sale being not made subject to the lease. The purchaser had full notice of the lease :

Held, the tardiness of the defendant in consenting to affirm the lease, only affected the costs ; the defendant had done nothing that debarred her from confirming the lease and accepting the plaintiff as tenant, and as she was willing now to confirm the lease, the plaintiff could not redeem.

It may be said, as a rule, that every one having an interest from the mortgagor in the land, can redeem the mortgagee.

Arnoldi, for the plaintiff.

Beck, for the defendant.

Wilson, C. J. C. P.]

[June 6.

VARDON v. VARDON.

Action for alimony—Right of plaintiff to compromise—Rule 97—Enforcement of compromise—Separate negotiations for settlement carried on simultaneously between clients and their solicitors respectively—"Without prejudice."

A married woman can not only bring an action for alimony against her husband in her own name, but she can also compromise it, or deal with it as she pleases, just as any other suitor

can : *Beasant v. Wood*, L. R. 12 Ch. D.; *Hart v. Hart*, L. R. 18 Ch. D. 670.

If the plaintiff and defendant have agreed to certain terms of settlement of such a suit, such contract can be enforced against the defendant : *Wilson v. Wilson*, 1 H. L. Cas. 538.

If, in such a case, negotiation with a view to a settlement are carried on between the parties by means of letters marked "without prejudice," and if, by means of such letters, a perfect contract has been come to between the parties, the letters may be given in evidence to prove the binding contract notwithstanding the restrictive words.

If parties to an action authorize their solicitors to enter into negotiations for a settlement, and while the negotiations are proceeding, one party, unknown to his solicitors or to the solicitors of the other party, writes to the other party personally withdrawing from the negotiations, and the respective solicitors, not knowing what has taken place between their clients meanwhile, conclude the terms of a settlement, such settlement will not be binding on the party who had thus withdrawn from the negotiations, because the other party had direct notice of his withdrawal. In such a case the one principal has direct notice from the other principal that the negotiations have been put an end to.

Semle, if in such a case the principals had, between themselves, entered into an agreement, and the solicitors, in ignorance of what the clients were doing, had previously concluded a different agreement, the agreement made by the solicitors would bind, because prior in time, and made by and under the full authority of the principals.

On the same reasoning where the two principals negotiate, and either perfect a contract or put an end to proposals for one before the delegated power to their agents has been fully exercised, the acts of the principals are the binding acts, and the subsequent acts of the agent are of no avail as against their principals.

Blackstock, for the plaintiff.

Bain and Gordon, for the defendant.

Wilson, C. J. C. P.]

[June 6.

EDWARDS v. MORRISON.

Mortgage—Priority—Notice.

On April 4, 1863, M. the owner of land, mortgaged in fee to the Canada Permanent L. & S. Com-