

Chan. Div.]

NOTES OF CASES.

[Chan. Div.]

be subtracted from the \$1,900, and the balance paid in instalments of \$100 each on April 1st in each year, until the whole of such balance should be paid; and it was the \$1,900, less the amount due the Crown, which was to be secured by mortgage; and the purchaser had no right to apply any of the instalments in payment of the sum due to the Crown, or postpone payment to the vendor; and it must be *held* that the words, "during nineteen years," were employed either by error, or because it was not known how much was due to the Crown.

*Semble*: It does not follow that because a plaintiff asks in his bill for reformation of a document, that therefore a defendant is entitled to claim the same relief, though he has not asked for it.

*S. H. Blake, Q.C.*, for the plaintiff.

*McMichael, Q.C.*, for the defendant.

Ferguson, J.]

[April 8.]

BELL V. LANDON.

*Trust—Administration—Account.*

The bill charged that by a fraudulent and collusive sale, land of a testator was sold at an under value to one of the trustees and executors of the will, in the name of an accomplice.

The evidence did not support the above allegations; and moreover, by deed of March 6th, 1863, executed after the said sale, the various beneficiaries under the will, with one exception, (whose claim had, by the consent of all concerned, been compromised), assigned to the said trustee and executor all their interests under the will, on receiving a proper proportion of the sum actually realized at the sale. The deed recited that the assignors had carefully examined the accounts of the executors by themselves and their counsel, and also recited the fact of the sale, and that the assignors were satisfied with the result of it. All the parties were of full age and had professional advice, and all the circumstances attending its execution were fully explained.

*Held*, the deed was binding on the parties who executed it; and also the sale to the trustee was valid.

*Held also*, inasmuch as the accounts had, at the instance of one of the defendants, been

brought into the Surrogate office upon a citation, that all parties interested were aware of, and had for eight years remained there without question, surcharge or falsification, the plaintiff was not entitled to have an administration of the estate.

*Bill dismissed with costs.*

Boyd, C.]

[April 22.]

WILMOT V. STALKER.

*Statute of Frauds—Sufficient description of parties.*

"Vendor" is not a sufficient description of the party selling to satisfy the requirements of the Statute of Frauds.

Where one of the conditions of sale was, "The vendor shall have the option of a reserved bid, which is now placed in the hands of the auctioneer;" and where that reserved bid was couched in the following terms: "Re sale Allan Wilmot's farm; reserved bid, \$105 per acre;" and although it was conceded that the paper containing the reserved bid might be read as incorporated in the agreement signed by the purchaser at the foot of the conditions of sale, nevertheless it was *held* that the above words read together did not so identify the vendor as to satisfy the statute. *Shardlow v. Cotterill*, L. R. 18 Ch. D. 293, and *Vandenbergh v. Spooner*, L. R. 5 Ex. 316, followed.

*MacLennan, Q.C.*, for the plaintiff.

*Foster and Clark* for the defendant.

Boyd, C.]

[April 22.]

GILL V. CANADA FIRE AND MARINE CO.

*Insurance by vendor under contract to sell.*

1. A vendor, who has agreed to sell for full value, has nevertheless, pending the contract of sale, a perfect right to effect an insurance upon the premises sold.

2. If, under such circumstances, a vendor insures the premises describing them as "his," this is no such misrepresentation or misstatement as to invalidate the policy, where no enquiries have been made by the company as to the nature or extent of the interest of the applicant for the policy.