

divorce was therefore declared, yet the wife was entitled to alimony out of his said property. It was a good answer to this action that the plaintiff had not made out a case for alimony in this country.

German, for plaintiff. *Rykert*, for defendant.

Boyd, C.] HIGGINS v. TRUSTS CORPORATION OF ONTARIO. [July 6.

Mortgage—Purchaser of equity of redemption—Indemnity—Death of mortgagor—Insolvent estate—Administrator—Release.

Where the mortgagor is dead and his estate is insolvent, the mortgagee cannot compel the administrator of the estate to seek indemnity from one who purchased the mortgaged estate from the mortgagor subject to the mortgage, nor is the administrator responsible in damages to the mortgagee for having released the purchaser from liability.

R. U. Macpherson, and *G. C. Campbell*, for plaintiff. *J. H. Moss*, for defendants.

Nova Scotia.

Full Court.]

[March 1.

FRANCKLYN v. THE PEOPLE'S HEAT AND LIGHT CO.

Gas Company—Nuisance to adjoining property—Interim injunction—Granting of, deferred on undertaking to remove nuisance and pay damages—Delay in commencing proceedings.

Where it was clearly established that smoke, gases and vapors of a noxious or offensive kind passed continually from the defendant's works and invaded plaintiff's premises, and occasioned material discomfort and annoyance to plaintiff and his family, by rendering plaintiff's house uninhabitable,

Held:—1. The case was one in which the court could properly exercise the summary power entrusted to it by granting an injunction without waiting for the trial. Nevertheless, that as it was possible for the defendant company to carry on their operations in such a way as to remedy the annoyance and injury to plaintiff, that the injunction should be stayed upon the defendant company giving an undertaking to remedy the annoyance and injury complained of and to make proper compensation for the damage already suffered.

2. Plaintiff, having warned the defendant company at the outset, of the results likely to arise from the erection and carrying on of the works, and having protested from time to time without effect against the manner in which the works were carried on, was not to be held prejudiced by a delay of two years after the erection of the works, in commencing his proceedings,