

Com. Pleas.]

NOTES OF CANADIAN CASES.

[Com. Pleas.]

conveying the premises known," etc., "together with all rent now due, or to accrue due, from the said John Irving or his assigns in respect of said lease and the term thereby created." The plaintiff brought an action on this instrument to recover rent which accrued due after the making thereof. At the trial the learned judge charged the jury that while the plaintiff remained solicitor for D. he could not take any security for his benefit; and that he should have first dis severed the connection between them, and let D. have independent legal advice.

Held, misdirection.

Held, also, that D. was not a necessary party, for if such a state of facts existed as would constitute fraud it might be raised without D. being a party; nor even if defendant desired to obtain relief over against D., for plaintiff had nothing to do with this, for she would only be so added to protect both parties.

A new trial was granted, unless the plaintiff desired the Court to consider matters not raised on the argument, namely, whether the assignment was of the reversion or of future rent issuing out of the land, and therefore void as not being under seal; or whether it could be supported as an assignment of a chose in action, namely, of the moneys payable under and by virtue of the covenants of the lease.

The plaintiff in person.

E. Meyers, of Orangeville, contra.

Divisional Court.]

[Feb. 28.]

McCRAE V. BACKER.

Sale of land—Title of land—Condition precedent to payment of purchase money—Costs—Damages.

On 2nd May, 1882, the plaintiff agreed to sell and the defendant to buy certain land for \$856, namely, \$156 on the execution of the agreement, and the balance, \$700, without interest, on 1st January, 1883; and defendant covenanted to pay said sums as aforesaid. In consideration whereof the plaintiff covenanted to convey, or cause to be conveyed, the land to defendant free from incumbrances, and to permit defendant to occupy same until default. The agreement also provided that defendant might assume possession of the land and collect the rent then due from M., the tenant, and make arrangements with him for giving up possession. The defendant took possession

when he was turned out by M., who claimed the land and had registered a *lis pendens* against it. Ejectment was then brought and judgment recovered against M., when his solicitors undertook to remove and did remove the *lis pendens*, the defendant having been kept out of possession for a year. In an action by plaintiff against defendant for the purchase money the defendant set up as a defence that on 1st January, 1883, plaintiff could not give an unincumbered title to land by reason of the *lis pendens*; and also counterclaimed, contending for the costs of the ejectment suit, and for damages for being kept out of possession.

Held, by CAMERON, C. J., following *McDonald v. Murray*, that the shewing a good title by plaintiff was not a condition precedent to his right to recover the purchase money, and by ROSE, J., apart from this the plaintiff was entitled to recover; that defendant could have no claim for the costs unless there was an unqualified agreement to pay them; but, as it appeared, plaintiff, on his own statement, intended to pay some portion he was charged with half; and plaintiff was disallowed interest for the time defendant was kept out of possession.

Divisional Court.]

[Feb. 28.]

BOULTBEE V. BURK.

Statute of Limitations—Part payment.

The mere fact of part payment is not sufficient to take a debt out of the Statute of Limitations. It must be such that a jury may fairly infer a promise to pay the remainder.

In this case where payments were made there was evidence upon which such inference could be made, and the learned judge who tried the case having found that there was a promise to pay the remainder, the Court refused to interfere.

H. J. Scott, Q.C., for the plaintiff.

Tilt, Q.C., for the defendant.

Divisional Court.]

[Feb. 28.]

ADAIR V. WADE.

Seduction—Assessment of damages by judge without jury, Validity of—Service of writ of summons—Evidence of—New trial.

In an action for seduction no appearance was entered. The plaintiff then filed a state-