

## The Legal News.

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### CONTRACTS IN FRAUD OF CREDITORS.

The judgment of the Court of Queen's Bench in the case of *Kane & Racine* clears up a question as to which considerable uncertainty and confusion have existed. Misled, probably, by some of the older decisions in appeal, in which the opinions of the Judges were divided, the Superior Court, in several cases in which a deed between his debtor and a third party has been opposed to a creditor, has referred the latter to the revocatory action to set aside the transaction of his debtor, and has not allowed him to allege the fraud by a pleading in the case in which the alleged fraudulent deed has been produced. In the case of *Kane & Racine* this was done by the Court below, although the sale from the debtor to the third party was only evidenced by a private writing between them. That the members of the profession were thrown into some perplexity by the decisions on this subject, may be inferred from the fact that a bill was introduced, during the last session at Quebec, by Mr. Racicot, for the purpose of enabling deeds in fraud of creditors to be attacked in contesting the declarations of garnishees, or in contesting oppositions made by third parties, without the necessity of having recourse to a revocatory action. (See 2 Legal News, p. 258.) That bill was dropped, and it is well perhaps that it was not passed, since the judgment of the Court of Queen's Bench and the observations of the learned Chief Justice not only show that the question is already settled by the jurisprudence of the Province, but the rule is laid down in a clearer and more satisfactory manner than was done by the bill in question. The Court holds that where the creditor who is complaining of a deed passed in fraud of his rights has not been a party to the deed, he may invoke its nullity in any proceeding in which the deed is opposed to him. But where the creditor has been himself a party, he must bring the action *révocatoire* in order to have the deed annulled, before he can exercise any right which he abandoned or ceded by the deed. This is a clear and intelligible rule, and

seems much more reasonable than that which would suffer the creditor to be frustrated in the prosecution of his right, by the production of a private writing of uncertain date, and of the existence of which he may have been ignorant until it was disclosed to him in the contestation.

### INSCRIPTION IN REVIEW.

The case of the *Montreal & Ottawa Forwarding Co. v. Dickson*, of which a note appears in this issue, involves a question of procedure of considerable importance, which is worthy of special attention. It was a case where the defendant pleaded an exception to the form which was dismissed, and he filed an exception to the judgment. Subsequently, on the merits, judgment was rendered dismissing the action without costs, and the defendant, being dissatisfied with the adjudication as to costs, inscribed the case in Review. At the hearing in Review he was desirous of bringing up the interlocutory judgment dismissing the exception to the form, but the Court held that he had no right to do this, because the inscription in Review was general, and did not mention specially that the revision of the interlocutory judgment was also sought. This is extremely important, because under 37 Vict. c. 6 (Que.), the judgment of the Court of Review is final where it confirms the judgment rendered in the first instance, and thus by the inadvertence of the attorney, or even by a merely clerical error in the inscription, the suitor may be deprived of the right of getting an interlocutory judgment revised. It is to be remarked that no review could have been had on the interlocutory judgment at the time it was rendered, and therefore when the case was inscribed on the final judgment, there was some ground for supposing that an inscription generally would be sufficient to cover all the interlocutory orders or judgments which had been rendered previous to the final decision. It might be well, perhaps, in laying down a rule of the stringent nature here referred to, to permit the amendment of the inscription where considered necessary.

### MARRIAGE WITH DECEASED WIFE'S SISTER.

Mr. Girouard, M.P. for Jacques Cartier, has introduced a measure in the House of Commons to legalize marriage with the sister of a