

Prac. Cases.]

NOTES OF CANADIAN CASES.

[Prac. Cases.]

36 U. C. Q. B. 559; *Bank of Montreal v. McWhirter*, 17 C.P. 506. Judgment reserved.

January 24th.

BOYD, C.—In the present state of the law, the safest course to adopt on the present application is to continue the injunction until the hearing. It is evident that views of Draper, C.J., in *Boynton v. Boyd*, 12 C.P. 334, though not essential to the disposition of that case, are at variance with the views expressed in *Re Coleman*, 36 U. C. Q. B., in which the earlier case does not appear to have been cited. If it be that the *dicta* of Draper, C.J., are law, then the agreement to hold the goods as security in the case, not being registered would be invalid as against the subsequent assignment for the benefit of creditors. But if not, then in another aspect of the case which is not at present presented, it may be that the privilege claimed by the plaintiff cannot be enforced as against any of the creditors of Hicks intervening in that character, as I held in *Park v. St. George*. As against a voluntary assignee, it may be that the plaintiff can succeed: as against a creditor prejudiced by the registered agreement, it may be that the plaintiff will fail. But this aspect of the case is not at present before the Court, so that I content myself with holding the fund *in medio* that the rights of all parties may be better disposed of at the trial. Costs of this motion will be reserved till then.

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

*Akers*, for the defendant.

#### PRACTICE CASES.

Hagarty, C.J.]

[Sep. 15, 1882.

IN RE PRESCOTT ELECTION PETITION.

*Election petition—Presentation of.*

*Held*, that under 37 Vict. ch. 10 (Can.), the filing of an election petition in the local registrar's office at L'Original was not a presentation within the requirements of the statute.

*Bethune*, Q.C., for the motion.

*A. Cassels*, contra.

Osler, J.]

Nov. 13, 1882.

RE SIMPSON AND THE JUDGE OF THE COUNTY COURT OF LANARK.

*Voters' list—Notice—R. S. O. ch. 9. Sec. 9*

A notice required by sec. 9 R. S. O. ch. 9, to be given by a voter or person entitled to be a

voter making a complaint of any error or omission in the voters' list should be subscribed to by the person complaining, or his agent.

The question of the validity of the notice may be raised on the hearing of the complaint.

*Holman*, for the motion (*ex-parte*).

Ferguson, J.]

[Nov. 23, 1882.

RE COLTHART.

*Dower—Lunatic—Infant—44 Vict. (O.) ch. 14 sec. 5.*

The mother of an infant whose estate was being sold under the provisions of R. S. O. ch. 40, ss. 75-83, was a lunatic, and confined in the London Asylum.

FERGUSON, J., made an order under 44 Vict. ch. 14, sec. 5, barring the mother's dower.

*Hoyles*, for the application.

Osler, J.]

[Jan. 18.

MYERS V. KENDRICK.

*Examination—Judgment debtor—Rule 366—369 O. J. A.*

The plaintiff was nonsuited in the action, and the defendant recovered judgment against him for his costs of defence.

*Held*, that the plaintiff was not a judgment debtor within the meaning of Rule 366 O. J. A., or sec. 17 R. S. O. chap. 49, or sec. 304 R. S. O. cap. 50.

The defendant had obtained the usual appointment from an examiner, and served the plaintiff with a copy, together with a copy of a subpoena, at the same time exhibiting the original subpoena.

*Held*, that an original appointment, signed by the Judge or officer, must be served under Rule 369 O. J. A., on the person to be examined.

*Held*, also, that an examination of a judgment debtor under R. S. O. cap. 49, sec. 17, or under R. S. O. cap. 50, sec. 304, can only take place under a rule of Court, or Judge's order.

*Semble*, the provisions of sec. 304, R. S. O. cap. 50, have been superseded by the O. J. A. and Rules.

*Aylesworth*, for motion.

*Clement*, contra.