

Ct. of App.]

NOTES OF CANADIAN CASES.

[Ct. of App.]

preference of partnership creditors over separate creditors, affirmed on appeal.

*S. H. Blake, Q.C., for appeal.*

*Rose, Q.C., contra.*

BAILLIE v. DICKSON.

*Promissory note—Notice of dishonour—Renewal—Principal and agent.*

The note upon which this action was instituted had not been properly stamped, and it was urged that it could not be a payment or satisfaction of one of which it was intended to be a renewal.

*Held*, that the plaintiff being aware of the objection to the unstamped note, and receiving it in lieu of the paper which he held, could not urge this as an objection, he having declared upon it as a promissory note.

Where the holder of a note employs a notary to protest the same at maturity, it is his duty to give the notary all the information that he is possessed of as to the names and residences of the endorsers. Therefore, where the signature of an endorser was so peculiar that no one unacquainted with it could decypher it, and the notary when protesting it made, as near as may be, a *fac simile* of the signature, and so addressed the notice of dishonour to "Belleville, P. O.,"—meaning, as he said in the evidence, "Province of Ontario,"—and the notice never reached the endorser.

*Held*, that the endorser was released.

*Bethune, Q.C., for appeal.*

*Geo. Kerr, contra.*

IN RE RUSSELL, AN INSOLVENT.

*Insolvency—Discharge of insolvent—Concealment of assets.*

A deed of composition and discharge was executed by creditors, and they had been paid the amount of composition. The insolvent, however, had not executed such deed, so that it was incapable of confirmation.

*Held* (per BURTON, J. A.), that the insolvent might still move for his discharge under the Act of 1875.

A retention by an insolvent of portions of his estate, and the concealment thereof by him must, to come within section 56 of that act, be wilful and fraudulent.

BEAVIS v. MCGUIRE.

*Conveyance for value—Hindering or delaying creditors—13 Elizabeth, c. 5.*

The defendant M. created several mortgages on his property, in each of which his wife joined to bar her dower upon the promise of M. that he would convey other property to her. Finally M. sold the equity of redemption, when the wife claimed the conveyance of the other land, which M. then conveyed to a trustee for her benefit.

*Held*, (affirming the decision of PROUDFOOT, J.), that such conveyance in trust was not voluntary, although the effect of it was to delay creditors in recovering their debts; and it having been shown to be a *bona fide* transaction, it could not be impeached under 13 Eliz. c. 5.

*Moss, Q.C., and Beck for appeal.*

*S. H. Blake, Q.C., contra.*

ADAMSON v. ADAMSON.

*Grant, Construction of—Statute of Limitations.*

Two several lots were conveyed to G. and A. respectively, to the use of G. and A., their heirs and assigns, as joint tenants and not as tenants in common.

*Held*, that the grantees took the respective lots in severalty.

*Held* also (affirming the judgment of SPRAGGE, C., 28 Gr. 221), upon the facts there stated, that the tenant of an equitable tenant for life, in setting up the Statute of Limitations against the equitable remainderman, could not be allowed to compute the time during which he had been in possession prior to the death of the tenant for life.

Per BURTON, J. A.—The owner of an equitable estate cannot, notwithstanding the Judicature Act, proceed against a trespasser in his own name. He is still bound to sue in the name of his trustee.

The provisions of the Statute of Limitations as regards equitable estates considered.

Per PATTERSON, J. A.—Under the circumstances appearing in this case the plaintiff was entitled to recover in respect of the equitable estate.

*Bethune, Q.C., and Moss, Q.C., for appeal.*

*Mowat, Q.C., and MacLennan, Q.C., contra.*