

[Chan.]

NOTES OF CASES.

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of buying stock in trade. The money was deposited in a bank at the time of the marriage, which took place before the C. S. U. C., cap. 73. The only evidence offered in corroboration of the claimant was that of one B., who said "he (Laws) told me he had got \$600 or \$700 from his wife. She had a little money. He said he had paid that money for the things he had in the store. This was after he had bought L. out. * * He said his wife had helped him to \$600 or \$700 * * I understood he had used the money to buy out the business."

Held, affirming the order of the Chancellor, reversing the finding of the Master, that she could not recover.

Per BLAKE, V. C. The evidence of the widow was not sufficiently corroborated.

Per PROUDFOOT, V. C. The evidence that she chose in action was originally hers, and that she gave it to her husband, was sufficiently corroborated, but the transaction having taken place before the C. S. U. C., cap. 73, under which she had the right to assert her proprietorship as against her husband, and as incident thereto, the right to bring a suit against him; and as to any such proceedings the Statute of Limitations would be a bar, her remedy was gone.

F. Beverley Robertson, for widow.

Laidlaw for defendant.

KASTNER V. BEADLE.

Right of way—Obstruction of.

An arrangement made between the plaintiff and B., whereby the latter "was allowed to go through" the plaintiff's land, was superseded by an arrangement whereby, in consideration of 150 cords of wood and the making of the road by B., the latter was to have a right of way through the plaintiff's land. The plaintiff was to erect and keep up the gate at one end, and B. to keep up the gate at the other end, of the road. The wood was delivered, and the road made, according to the terms of the agreement. The plaintiff subsequently erected three gates along the course of the right of way, which were not necessary for the enjoyment of the land. The bill was filed to restrain the defendant from using the way except upon the terms of shutting those three gates when going through.

Held, reversing the decree of the Chancellor, that the right of way having been purchased when there were but two gates, the plaintiff had no right to fetter the enjoyment of the way by adding additional gates.

Boyd, Q.C., for plaintiff.

Idington, Q.C., for defendant.

EXCHANGE BANK V. SPRINGER.

THE SAME V. BARNES.

Parties—Principal and surety—Non-joinder of principal.

One M., and the defendants as his sureties, executed a bond conditioned for the good behavior of M., a clerk of the plaintiff's at Montreal. The bond was executed at Hamilton by the defendants who were resident there. M. made default at Montreal and absconded. Proceedings were then taken against the sureties, without joining M.

Held, affirming the order of PROUDFOOT, V.C., that the plaintiffs could not proceed against the sureties alone, if they required the joinder of the principal in order that they might have their remedy over against him.

Per SPRAGGE, C. Though the breach occurred in Montreal, and there was no cause of action till default, yet there was a potential equity in the defendants, co-eval with the execution of the bond, which became a right of suit on the default of M.; and there was also an implied contract on the part of M., upon execution of the bond, to repay to his sureties any moneys that they might have to pay by reason of his default.

Per BLAKE, V. C. The plaintiffs having filed their bill in Ontario, must be taken to admit that the Court has jurisdiction in respect of the matters therein embraced; and the practice of the court requiring it, and a method having been provided for service of process out of the jurisdiction, the plaintiffs were bound to follow the practice if objection taken.

Bethune, Q.C., and *E. G. Patterson*, for plaintiffs.

Boyd, Q.C., and *MacKelcan*, Q.C., for defendant Springer.

R. Martin, Q.C., for defendant Barnes.