

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

*Held*, that the two township by-laws, with the corresponding village by-laws, formed an agreement, pursuant to R.S.O., cap. 205, sec. 30, as amended by 42 Vict., cap. 34, sec. 32, which could not be rescinded by one of the municipalities without the concurrence of the other; and therefore, that the repealing by-laws should be passed only upon the petition of two-thirds of the ratepayers.

*Aylesworth*, for applicant.

*Muir*, contra.

[Sept. 28.]

IN RE CAMERON, (a Solicitor.)

*Solicitor's undertaking to produce client—Failure to produce—Liability of solicitors.*

It was alleged that a solicitor, whose client had been summoned to be examined as a judgment debtor, in a Division Court action, gave a verbal undertaking that if the summons was enlarged the judgment debtor would appear to be examined at the next court. During the enlargement the judgment debtor disposed of his property and left this country, and a motion was made to compel the solicitor to pay the debt and costs.

*Held*, that the undertaking did not impose on the solicitor any liability other than the duty to produce his client at the Court on the day of its sittings.

*Seem*, that the solicitor's pecuniary liability on his undertaking would amount only to the expense which the creditor might be put to of attending at the time and place of the adjournment, if the debtor failed to appear, though other damage might possibly be proved. The undertaking having been denied by the solicitor for the debtor, the notice was dismissed.

*Aylesworth*, for applicant.

*Cattanach*, contra.

CHANCERY DIVISION.

Boyd, C.]

[Sept. 29.]

MUNDELL V. TINKISS.

*Absolute deed—Parol evidence—Rectification—Fraudulent purpose—Mortgage or no mortgage.*

Where the plaintiff brought an action to redeem a certain property conveyed by him by

a deed absolute in form; and it appeared that the deed in question, which he now sought to cut down to a mortgage, had indeed been executed by him for the purpose of securing a debt due to the grantee, but that the main object of the transaction was to protect the property from the claims of an apprehended creditor:

*Held*, under these circumstances evidence was not admissible to rectify the form of the instrument, for, as said by Esten, V.C., in *Phelan v. Fraser*, 6 Gr. 337, this Court never assists a person who has placed his property in the name of another in order to defraud his creditor; nor did it signify whether any creditor had been actually defeated or delayed, for the language of the M. R. in *Symes v. Hughes*, L. R. 9 Eq. 479, is too broad when he says, "if the purpose for which the assignment was given is not carried into execution, and nothing is done under it, the mere intention to effect an illegal object when the assignment was executed does not deprive the assignor of his right to recover the property from the assignee who has given no consideration for it." The decided weight of authority, and authorities in our own courts, is that after the property passes, whether by the execution of a written instrument or by other means sufficient in law, it is not open for the fraudulent grantor to undo the matter either out of court or by the aid of the court.

Where one has executed an absolute deed, as, in reality, security for payment of a debt only, and has, after the execution thereof, continued in possession of the land conveyed through tenants, that fact would be enough in ordinary circumstances to justify the reception of evidence for the purpose of rectifying the form of the instrument.

Boyd, C.]

[Sept. 29.]

ONTARIO BANK V. LAMONT.

*Assignment in trust for creditors—Impeaching such assignment—Fraudulent preference—Discretion of assignee in trust.*

Where it was sought to set aside a certain assignment of real and personal property made by a debtor to a trustee for creditors, and it appeared that the assignor had, before the execution of it, satisfied some of his creditors in full