

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

changed by agreement between the predecessors in title of the plaintiff and defendant, but no deed was registered. A's parcel subsequently became vested in the plaintiff, under conveyances granting not only the land but also all ways, etc., therewith used and enjoyed. The plaintiff also claimed title to the way in question under a deed from one of the defendant's predecessors in title of B's 50 acres, which was not registered until 22nd May, 1882. The defendant claimed title to part of B's 50 acres by deed made in 1854, without notice of the alleged right of way.

The way in question was used by the plaintiff and his predecessors in title for 30 years, prior to the obstruction thereof by defendant, to restrain which this action was brought.

*Held*, that the plaintiff's right of way being a "way of necessity," it was not necessary for the plaintiff to show any express grant of the right of way, by the defendant or his predecessors in title.

*Held*, also, that the "way of necessity" passed under the grant of the land and "all ways, etc., used and enjoyed therewith."

*Held*, also, that the subsequent express grant of a right of way, by the defendant's predecessor in title, did not destroy the right to a way of necessity.

*Held*, also, that the plaintiff was entitled to the user of the way in question as a "way of necessity," notwithstanding the non-registration of the deed whereby it was granted by the defendant's predecessor in title, and to an injunction restraining obstruction thereof by the defendant.

*Held*, also, that the defendant, having actual notice of the plaintiff's use of the way, must be presumed also to have knowledge of the right by which it was enjoyed.

*Held*, also, that if the way in question were not a "way of necessity" it would, nevertheless, have passed to the grantee of the land to which it was appurtenant, and "all ways used and enjoyed therewith," following *Langley v. Hammond*, L. R. 3 Ex. 171; *Watts v. Kelson*, L. R. 6 Cby. 174; and *Kay v. Oxley*, L. R. 10 Q. B. 366.

Proudfoot, J.]

[Jan. 10.]

BEEMER v. OLIVER.

*Estoppel—Insolvency—Creditor—Acquiescence—Sheriff's sale—Fraudulent conveyance.*

The plaintiff, an execution creditor, purchased at sheriff's sale, under execution, certain lands of which the registered title was then in the execution debtor; but in a subsequent suit, by the assignee in insolvency of the husband of the execution debtor, to which, however, the sheriff's vendee was no party, judgment was obtained declaring that the conveyances whereby the lands had been transferred from the insolvent to his wife were fraudulent, and the assignee thereupon proceeded to sell the lands as part of the estate of the insolvent, the sheriff's vendee attending and forbidding the sale. At this sale the defendant became the purchaser, and the proceeds of this sale, together with the other assets of the insolvent estate, were distributed by the assignee, and the plaintiff, being also a creditor of the insolvent, accepted a dividend in common with the other creditors.

*Held*, by accepting the dividend, part of which was paid out of the proceeds realized by the assignee out of the sale of the lands in question, the plaintiff was estopped from impeaching the sale by the assignee. *Cairncross v. Lorimer*, 7 Jur. N. S. 149, followed; *Millar v. Hamelin*, before OSLER, J., not yet reported, distinguished.

*Held*, also, that the purchaser from the assignee was entitled to avail himself of any defence which would have been open to the assignee.

Proudfoot, J.]

[Jan. 10.]

HENDRIE v. G. T. R. CO.

GRAND TRUNK RAILWAY CO. v. TORONTO, GREY AND BRUCE RAILWAY CO.

31 *Vict. c. 40, s. 21 (O.)*—38 *Vict. c. 56, s. 13 (O.)*; 44 *Vict. c. 74, s. 14 (O.)*—*Bondholders—Toronto, Grey and Bruce Railway Co.—Voting—Right to vote as shareholders.*

Under a statute which provided that in the event at any time of the interest upon the bonds of a railway company remaining unpaid and owing, then at the next general meeting of the Company, all holders of bonds should have and possess the same rights and privileges, and qualifications for directors and for voting, as are attached to shareholders, provided that the bonds, and any transfers thereof, should have