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DECISIONS IN COMMERCIAL LAW.

BARBER V. McCUAIG.—A mortgagor of land sold the equity and took from the purchaser a covenant to pay off the mortgage which he assigned to the mortgagee, who afterwards, without his knowledge, took by assignment from the purchaser the benefit of similar covenants from sub-purchasers, agreeing to exhaust her remedies against the latter before suing the purchaser. The Court of Appeal decided that the mortgagee had not thereby lost her right of action on the mortgagor's covenant in the mortgage, and if the latter's rights against the purchaser of the equity from him had been impaired by the plaintiff's conduct, that would be matter for damages after inquiry.

In re RUBY.—In the administration by the court of the insolvent estate of a deceased partner, the surviving partner is entitled to rank for a balance due to him in respect to partnership transactions and partnership debts paid by him, when apart from his claim there would be no surplus available for partnership creditors, says the Court of Appeal.

MASSEY-HARRIS CO. V. WARENER.—The plaintiff, on the 4th of December, 1893, recovered a judgment against the defendant, which was registered in the Land Titles Office in July, 1896. The defendant, on the 11th of August, 1896, became entitled as a homesteader to a patent for a quarter section, but on the 30th September he signed a quit-claim deed in favor of his wife, in consequence of which the patent issued in his wife's name. At the time of the transfer the husband was insolvent. The transfer was given without consideration and for the purpose of protecting the husband against his creditors, the wife claiming no interest in the land other than as trustee for her husband. The plaintiffs asked for an order directing a sale of the lands to satisfy their judgment. The defendant admitted that the judgment was a charge on the lands, but claimed they were exempt from sale under the Judgments Act, which provides that no proceedings shall be taken under any registered judgment against "the land upon which the judgment debtor or his family actually resides, or which he cultivates either wholly or in part." As the defendant and his family had been living on and cultivating the land ever since he took it up as a homestead, the referee was of opinion that it was exempt from sale, although it did not belong to him, and he dismissed the application. The plaintiffs appealed to the Court of Queen's Bench of Manitoba, where the appeal was allowed, the order of the referee set aside, and an order made for sale of the lands. The court decided that it might be assumed from the evidence that the conveyance from the defendant to his wife was fraudulent and void as against creditors. Still, such a conveyance is not void, but voidable; it is good as between the parties to it, and so, as between the defendant and his wife, the title of the lands was in her and he had no interest in them. The intention is manifest that the lands that are to be exempt from sale under s. 12 of the Act are the same kind of lands that are dealt with in the preceding sections, i.e., lands that belong to the judgment debtor himself, and that would be bound by the registration of a judgment against him at the time the exemption is claimed. The case of a man claiming as his exemption land that does not belong to him and in which he has no interest, is one that is altogether outside the scope and intention of the statute.

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