

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

titled to treat them as valid, and to apply the surplus accordingly.

*Held* also, that the plaintiff was entitled to no relief, either as against Culbert or Glennie, in respect of the moneys paid to Glennie.

*Held* also, that an absolute assignment of a *chose in action*, for less than its apparent value, is not open to objection on the ground of its savouring of champerty or maintenance, because the assignee thereby acquires the right to attack a transaction by the debtor as being fraudulent.

*J. Maclellan*, Q.C., for the plaintiff.

*J. Bethune*, Q.C., for the defendant.

Ferguson, J.]

Jan. 15.

SIMPSON V. CORBETT.

*Administration—Account—Illegitimacy—Escheat—Grantee of crown—Provincial Government—Executor—Trustee—Statute of Limitations—Parties.*

C. M. died in 1869, entitled to real and personal estate, which by will he devised and bequeathed to his two illegitimate children D. and E., and in the event of either dying, the share of the one dying was to go to the survivor. The defendant was appointed executor of the will and guardian of D. and E. who were infants. Both D. and E. died in 1871, D. having survived E. The defendant afterwards paid up a mortgage outstanding upon the realty, and took a conveyance of the land from the mortgagor to himself in fee.

The plaintiff on 24th July, 1880, procured a grant from the Crown under the great seal of the Province of Ontario, of the real and personal estate of which D. died entitled, upon certain trusts therein set forth, and as such grantee, on the 20th Oct., 1880, procured letters of administration to D.'s estate.

*Held*, that the plaintiff as such administrator was entitled to an account of the defendant's dealings with the real and personal estate of C. M.

*Held*, also, that although the original mortgagee might, in the events which happened, have become entitled to hold the mortgaged lands freed from the equity of redemption, yet that the defendant standing in a fiduciary relation to the lands in question, could not set up the title acquired from the mortgagee adversely to the plaintiff, and that he was trustee thereof for the plaintiff.

*Held*, also, that notwithstanding *Attorney-General v. Mercer*, 5 S. C. R. 538, the plaintiff's right to an account as administrator of D.'s estate, was not affected by the alleged invalidity of the grant to him of the escheated estate.

*Held*, also, that the Statute of Limitations was no bar to the action.

*Held*, also, that neither the *cestui que trust* named in the grant from the Crown, nor the Attorney-General for the Dominion, were necessary parties

*Maclellan*, Q.C., for the plaintiffs.

*Bethune*, Q.C., for the defendants.

Boyd, C.]

[Jan. 23, 24.

KITCHING V. HICKS.

*Interlocutory injunction—Conflicting decisions.*

Upon a motion for an interlocutory injunction restraining the payment of money, until the trial, it appeared that there was a decision affecting the legal question involved, in favour of the plaintiff, which was at variance with the *dicta* contained in a judgment given in an earlier case, which was not cited.

*Held*, that under the circumstances it was proper to grant an interlocutory injunction preserving the property *in medio* until the trial.

Whether an assignee for the benefit of creditors can successfully dispute a prior chattel mortgage on the ground of its not having been registered, *Quere*: see *Boynton v. Boyd*, 12 C. P. 334; *Re Coleman*, 36 U.C.Q.B. 559.

Jan. 23, 1883.

*Hoyles*, for plaintiff, moved to continue an injunction restraining defendant Clarkson from parting with \$800 of assets realized by him from the estate of his co-defendants, of which he is assignee for the benefit of creditors.

*Akers*, for defendant Clarkson, contended that the injunction should not be continued on the ground that the plaintiff claimed title to the property in question under an unregistered agreement in the nature of a chattel mortgage, which, he contended, was void as against the assignment to Clarkson. He referred to *Boynton v. Boyd*, 12 C. P. 334, and other cases.

*Hoyles*. — The assignee Clarkson has no *locus standi* to dispute the plaintiff's mortgage, which was valid between the parties, and could not be disputed by the assignee, who was not a purchaser for value. He relied on *Re Coleman*