SIMPLE CONTRACTS & AFFAIRS OF EVERY DAY LIFE.

NOTES OF NEW DECISIONS AND LEADING CASES.

LEASE—COVENANT NOT TO ASSIGN—VOLUNTARY ASSIGNMENT IN INSOLVENCY—FORFEITURE.—The lessees under a lease containing a covenant not to assign without leave, in the statutory form, made a voluntary assignment in insolvency on the 17th May, 1869. The assignee sold the stock-in-trade of the insolvents, who were dry goods merchants, and the purchaser took possession of the premises from him on the 27th May, the assignee also occupying a room there for the management of the estate: *Held*, that such assignment was a breach of the covenant and a forfeiture, for the term passed to the assignee, under the provisions of the Insolvent Act, and if any election to accept it were necessary on his part, it was shewn by his conduct.—*Magee* v. *Rankin*, *Elliott*, *Allan and Robinson*, 29 U. C. Q B., 257.

WAREHOUSE RECEIPTS—CON. STAT. C. CH. 54, 24 VIC. CH. 23.—The plaintiffs, a bank, claimed title to goods, under C. S. C. ch. 54, sec. 8, by virtue of a warehouse receipt signed by defendants, acknowledging to have received *from the plaintiffs* 6000 lbs. of wool, deposited in defendant's warehouse, subject to the plaintiffs' order.

Held, affirming the decision, but dissenting from the opinions expressed in the Queen's Bench —that such receipt, given directly to the plaintiffs, was not within the statute, which authorizes only a transfer by endorsement; and that the plaintiffs therefore could not recover.—*The Royal Canadian Bank* v. *Miller et al.*, 29 U. C. Q. B. 266.

SALE OF GOODS—F. O. B.—*Held*, reversing the judgment of the Queen's Bench, that upon a contract for the sale of 10,000 bushels of oats, "at 40 cents per 34 lbs., free on board at Kingston," the purchaser was not bound to pay or tender the price before requiring the seller to put the oats on board.—*Clark* v. *Rose*, 29 U. C. Q. B. 302.

EJECTMENT —STATUTE OF LIMITATIONS— POSSESSION UNDER DEFECTIVE TITLE.—Where a *bona fide* purchaser claims a whole lot, of which a portion is cleared, under a title which turns out to be defective, and while cultivating such portion treats the wild and uncultivated part as owners under such circumstances usually do, there is evidence to go to a jury to sustain his title by possession to the whole.

In this case the grantee of the Crown died in 1838, having by his will devised to his wife his personal property only. Supposing that it passed the real estate also, she registered the will, leased this land, one hundred acres, and received the rents until 1843, when she sold it for its full value to one L., who sold to defendant in the following year, there being then about thirty-five acres cleared. Defendant took possession on his purchase, built a house, and had occupied it ever since, having cleared about twenty acres more. The heir-at-law of the patentee, who was six years old when his father died, brought ejectment in 1868, so that the statute had clearly run against him as to all of which there had been possession.

The jury found that defendant had held possession of the whole one hundred acres for more than twenty years.

Held, that such verdict was warranted, and that the plaintiff could not recover.

Per Morrison, J.,—Payment of taxes on the whole is an important fact in such a case.—*Davis* v. *Henderson*, 29 U. C. Q. B., 344.

CONSTRUCTION OF THE ACT 29 VICTORIA, CHAP. 28, SECTION 28.—Where certain creditors of a deceased insolvent sued his executor, recovered judgments, and sold his real estate, and got paid in full: *Held*, that they were still bound to account, and that the other creditors of the insolvent were entitled to have the whole estate distributed *pro rata*, under the Act 29 Victoria, chapter 28.—*The Bank of British North America* v. *Mallory*, 17 Grant, 102.

PATENT FOR INVENTION—NOVELTY.—The plaintiff had obtained a patent for an improved gearing for driving the cylinder of threshing machines; and the gearing was a considerable improvement: but, it appearing that the same gearing had been previously used for other machines, though no one had before applied it to threshing machines, —it was *held*, that the novelty was not sufficient under the statute to sustain the patent.—*Abell* v. *McPherson*, 17 Grant, 23.

INSOLVENCY—MORTGAGE TO CREDITOR—ILLEGAL PREFERENCE.—A banking firm in Toronto, having become embarrassed by gold operations in New York, applied to the Plaintiffs, to whom they owed $50,000, to advance them $15,000 more; and, in order to obtain the advance, they offered to secure both debts by a mortgage on the real estate of one of the partners, worth $30,000. The plaintiffs agreed, made the advance, and obtained the mortgage. In less than three months afterwards the debtors became insolvent under