NOTES OF CANADIAN CASES.

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CHANCERY DIVISION.

Proudfoot, J.] [February 3.

HUGHES v. REES.

Res judicata—Estoppel—Necessity of pleading—No opportunity of pleading — Amendment at hearing—Master's office—O. J. A., r. 178, 184.

Appeal from the Master's Report made in accordance with his judgment reported 10 P. R. 301, and *supra*, vol. 20, p. 343, and pursuant to the reference ordered in this case which will be found reported 5 O. R. 654.

The defendant, D. J. Rees, now appealed from the report because the Master refused to conclude the plaintiff by the judgment in the Superior Court of Lower Canada, as it had not been pleaded, and had held that it was not open under the terms of the reference,

Held, that the defendant, D. J. Rees, had had no opportunity of pleading the judgment of the Lower Canadian Court; and might, therefore, produce it before the Master as conclusive evidence in his favour.

Although a judgment of a Court of competent jurisdiction directly on the point is, as a plea, a bar; and, as evidence, is conclusive between the same parties upon the same matter directly in question in another Court, yet to have this effect it must be pleaded *when there is an opportunity of pleading it*. But here the amendment made by the plaintiff was made on a motion subsequent to the hearing; but before the decree was drawn up under O. J. A., r. 178 and 184, and the order giving leave to amend was contained in the decree, which orders that upon the plaintiff amending his bill as he might be advised, it was referred to the Master to inquire if the plaintiff had any valid claim for maintenance, and if he had to take the account; but there was no provision for allowing the defendant to answer or set up a new defence, and from the order being for an immediate reference upon the amendment being made, it would appear that the learned Judge did not contemplate any answer being put in.

The Master certified that the defendant, D. J. Rees, also proved before him a judgment in the Superior Court of Lower Canada, dated Dec. 13, 1879, in an action by his wife against him for alimony, decreeing a certain sum to be paid by him to his wife as alimony from a certain date.

Held, this judgment must be deemed to put an end to any implied liability on the part of the husband to pay for the wife's maintenance subsequently to the date from which alimony was to be paid under it.

J. Maclennan, Q.C., and *R. E. Kingsford* for the appellant.

S. H. Blake Q.C., and *G. Morphy* contra.

Ferguson, J.] [February 17.

MACDONALD v. MCCOLL.

Creditors' suit—Chattel mortgage void against creditors—Simple contract creditors—Suit on behalf of all creditors except the preferred ones—Locus standi.

Action brought by simple contract creditors on behalf of themselves and all other creditors of C., other than the defendants, McColl & Co., to have a certain chattel mortgage made by C. to McC. & Co. set aside and cancelled as in fraud of creditors.

It appeared that the chattel mortgage was given by C. when in insolvent circumstances, because McC. & Co., knowing his circumstances, told him that if he gave it it would protect him against all his creditors but themselves, and that they would protect him. It also appeared that McC. & Co. told C. that there was no intention on their part to enforce the mortgage, unless other creditors took proceedings against him. C. did not give the chattel mortgage in answer to a demand on the part of McC. & Co., but because of their representations as above mentioned. Hence it appeared that a compact was entered into between McC. & Co. and C., the intent of which was to ward off, to hinder, and delay the other creditors, and to prefer McC. & Co. to them, and that the mortgage in question was made with this intent on the part of both parties to it; and that though the proposals that the