

Province of Manitoba.

KING'S BENCH.

Richards, J.]

KEDDY v. MORDEN.

[Dec. 4, 1905.]

Fraudulent conveyance—Statute of Limitations—Amendment after cause of action barred—Promissory note—Negotiable instrument—13 Eliz. c. 5—Registration of certificate of County Court judgment, binding effect of.

The defendants were husband and wife and the plaintiff brought this action for a declaration that the wife was only a bare trustee of the land in question for the husband, and that such land was subject to be sold to satisfy the plaintiff's claim under a judgment of a County Court against the husband of which a certificate had been duly registered. The husband had, in 1895, conveyed the land to the wife without consideration and for the purpose of defeating, hindering and delaying the creditors of the husband and to deprive them of recourse against the land. The plaintiff's judgment had been recovered in an action commenced on 3rd December, 1898, on an instrument in the form usually called a lien note, whereby the husband had promised to pay the plaintiff \$200 "on or before the first day of December, 1892."

Held, 1. The lien note was not a negotiable promissory note: *Bank of Hamilton v. Gillies*, 12 M.R. 495. Therefore, it was due on 1st December, 1892, there being no days of grace allowed, and the plaintiff's right of action on it was barred by the Statute of Limitations at the time when he commenced his suit upon it.

2. During the three days before the commencement of that suit, the plaintiff could not have successfully attacked the conveyance as fraudulent under the statute 13 Eliz. c. 5, relying solely on his own claim as a basis: as *Struthers v. Glennie*, 14 O.R. 726, decides that a voluntary conveyance cannot be successfully attacked on the basis of a debt due at the time of the conveyance, but barred by lapse of time before the action to attack was begun.

3. The wife was not bound by the recovery of the judgment, as she was no party to it, and should now be permitted to plead the Statute of Limitations, if necessary, to any claims under the Statute of Elizabeth, just as she could have done if this action had not been commenced on 3rd December, 1898; and, therefore,