

C. of A.]

NOTES OF CASES.

[C. of A.]

pellant would "prosecute" the appeal instead of "duly prosecute" as required by sec. 128. *Held*, that the omission of the word "duly" was immaterial.

Several creditors, who are not interested in the debts due to each other may join in one appeal.

In computing the eight days within which proceedings must be adopted for an appeal under sec. 128, the day on which the final order or judgment is rendered is excluded.

The effect of sec. 124 of the Insolvent Act of 1875 is to continue the rules of practice given in secs. 84 and 85 of the Insolvent Act of 1869, as modified by sec. 128 until they are replaced by others.

The appellants completed their security and served the application and notice within the eight days, but failed to notify the assignee. *Held* that they must be considered as "having adopted proceedings" within the meaning of sec. 128; but the appellants were ordered to serve the assignee.

J. S. Ewart, for the appellants.

Ferguson, Q. C., (with him *Monkman*), for the respondents.

Appeal allowed.

From C. P.]

[March 4.]

MCEDWARDS, ASSIGNEE, v. PALMER.

Insolvent Act 1875, secs. 130, 132, 134—Preference.

The insolvent, six months before an attachment in insolvency issued against him, conveyed his equity of redemption in certain lands to the defendant upon trust, to sell the same and apply the proceeds, after payment of a mortgage thereon, in payment of pre-existing debts due to the defendant and one T., and to pay over the surplus, if any, to the insolvent. The defendant sold the land subject to the mortgage, and paid himself and T. out of the proceeds. It did not appear what other property the insolvent had at the date of the deed, or what other debts he owed. The estate, however, which came into the hands of the assignee, consisted of a watch, and the claims proved amounted to \$277.80. The evidence did not shew that the deed was made in contemplation of insolvency.

The learned Judge at the trial found that there was no fraud or preference in the making of the deed, and that it was a *bona fide* transaction.

Held, that the deed was not under sec. 132, as the evidence did not shew that creditors

were injured, obstructed, or delayed; nor under the 133rd sec., as it did not appear that it was an unjust preference, or made in contemplation of insolvency.

M. C. Cameron, Q. C., and *Osler*, Q. C., for the appellant.

Kerr, Q. C., and *Boyd*, Q. C., for the respondent.

Appeal allowed.

From Chy.]

[March 4.]

INGLIS v. BEATTY.

Executor—Annual rest.

The rule upon which the Court acts in charging interest rests upon the basis of compensating the *cestui qui* trust and depriving the trustee of the advantage he has wrongfully obtained.

An executor will not necessarily be charged with compound interest in all cases except those in which there is a mere neglect to invest.

Where an executor retained a portion of the trust money under the belief that it was his own and had acted on that supposition without objection from those interested under the will—and it did not appear that he had used the money in business,

Held, reversing the decree of Blake, V.-C., that under the circumstances he was only chargeable with simple interest.

C. Moss for the appellant.

J. A. Boyd, Q. C. (with him *W. Cassels*), for the respondent.

Appeal allowed.

From Chy.]

[March 4.]

WILSON v. BEATTY.

Will—Construction of.

A testator devised all his estate to his issue—if a son, on attaining the age of 25 years, and if a daughter, on her attaining the age of 18 or marriage, "and in the event of there being no such issue of the said marriage of myself and my said wife, *born, or if born, not living within one year from my decease,*" then over.

A few weeks after the testator's death, his widow had a son, who lived only a few days.

Held, that the gift over must take effect as there was no child living at the end of the year.

J. A. Boyd, Q. C., (*Donovan* with him), for the appellant.