CHANCERY.

Blake, V. C.] [March 23.

THOMPSON V. TORRANCE.

Mental capacity—Testamentary capacity—Will obtained by interrogation—Mortmain Acts.

The testator, a man of education, had become so weakened by illness as to be confined to his bed for weeks prior to his death, and a day or two before that occurred, executed a will by affixing his mark thereto, the instructions for which were obtained by the person preparing it by putting questions to the testator as to the disposition of his different properties; such will when drawn having been read over to the testator clause by clause, who expressed his assent to some of them, while as to others he made intelligent remarks and some changes in the provisions thereof, and then executed it. The Court (BLAKE, V. C.,) in a suit brought to impeach the will as having been obtained by fraudulent practices and undue influence of persons benefited thereunder, as well as by the persons concerned in the preparation of the will, refused the relief sought and dismissed the bill, with costs to be paid out of the residuary estate; although it was shown that though notice had been given to the testator, he was wholly unprepared to make the will when he came to the act—that there was no intention on his part to make a will—that he was a man who, when in possession of his mental faculties, was not likely to take suggestions from others—that not a single devise originated with the deceased—that the author of the will did not know what property the deceased had—that he admitted if he had had this knowledge he would have spoken to him seriously on the subject of his relations—that the will was inofficious—that the testator was 84—that it took two hours to prepare the will, although it covered but one foolscap sheet—that they sent and got the number of the lot from a neighbor, showing that they could not obtain it from the deceased. The residuary estate, consisted of mortgages, the bequest of which, under the Mortmain Act, was declared invalid, and to belong to the next of kin of the testator, the plaintiff in the suit.

Proudfoot, V. C.] [April 2.

WORKMAN V. ROBB.

Fraudulent conveyance—Statute of limitations.

A bill was filed in 1880, alleging that in June, 1864, the defendant L. conveyed to the defendant R. a lot of land, which conveyance was either voluntary or the consideration received therefor had been repaid, and that L. had ever since occupied the lands, without any acknowledgment of title in R. up to January, 1880, when L. attorned to R., placing his (L.'s) son in possession. On the hearing it was satisfactorily established that R. was a mortgagee of the property, and that in 1864 the equity of redemption had been released in consideration of further advances to L., who then left the country and did not return until 1867, when he went into possession and expended large sums of money in improvements made after consultation with R., and which were so made in lieu of rent. The Court, [PROUDFOOT, V. C.,] was of opinion that the suit entirely failed so far as it rested on the fraudulent character of the original transactions between L. and R., and that L. was not compelled to assert a title by length of possession so as to enable an execution sued out at the instance of the plaintiffs to attach upon the property.

Keffer v. *Keffer*, 27 C. P. 257, remarked upon and distinguished.

Blake, V. C.] [April 6.

DIRECT CABLE COMPANY V. DOMINION TELEGRAPH COMPANY.

When a submission to arbitration provides for making such submission a rule of any particular Court, no suit or proceeding can be had in any other Court to set aside the award although such submission has not been made a rule of the Court named in it.

Before an award has been made a rule of Court, a Court of equity has jurisdiction to restrain an arbitrator improperly appointed from entering upon the duties of such arbitration. Where a submission to arbitration has been made a rule of Court, no application can be made to any other Court for the purpose of setting aside the award.

Where the defendants in the suit resided in this country and the plaintiff's principal office was in England, and a contract was entered into there between the parties which was to be