PRACTICE.

Boyd, C.] [December 15, 1884.

YEMEN v. JOHNSTON.

Money in Court—Assignment—Solicitor's lien—Priority—Salvage money.

The fact that an assignment was made by the defendant to a creditor of a portion of a fund in Court, as to which litigation was pending between the defendant and plaintiff (mortgagor and mortgagee) as to the amount to which each was entitled, and which, therefore, involved the incurring of costs before the amount could be apportioned, imposed upon the assignee the necessity of submitting to all just and proper deductions for the charges of the solicitors by whose exertions the portion of the fund payable to the defendant was ascertained. To the extent to which the defendant's solicitors incurred costs in resisting and prevailing against the account brought in on behalf of the plaintiff, to that extent their lien should precede the claim of the assignee. Such costs are in the nature of salvage money, and are always entitled to meritorious consideration.

Shepley, for the solicitors.

Holman, for the assignee.

Ferguson, J.] [Dec. 8, 1885.

DUFRESNE v. DUFRESNE ET AL.

Sale at undervalue—Purchase for value without notice—Advance by wife to husband without any contract for repayment.

L. F. D. being the owner of certain valuable property mortgaged it for $700, became of unsound mind and was confined in an asylum. During his confinement M. A. D., his second wife, procured S., the holder of the mortgage, to sell under the power of sale, and it was sold for $900 to E. R., the sister of M. A. D. Two years after E. R. sold the property to M. E. B. for $5,000, and a mortgage for $4,000 unpaid purchase money was taken to M. A. D.

In an action by L. F. D. by L. D., his next friend, to set aside the sale, or for an account, it was

Held, on the evidence, that the property was sold at a great undervalue under the power of sale, and that E. R. was the agent of M. A. D., but that as M. E. B. was a purchaser for value without notice the sale must stand, but an account of the proceeds was ordered against M. A. D.

During the trial M. A. D. obtained leave to amend, and claimed to be allowed a sum of $1,500 which she alleged she had given to her husband the plaintiff as a loan, and which was employed in the purchase of the property and building thereon.

Held, that as no contract for repayment was shown, no security being taken, and no attempt having been made to collect the amount, although many years had passed, it was not a loan and the wife could not recover it.

W. H. Barry and *Sinclair*, for the plaintiff.

Lees, Q.C., for the defendants Mary Ann Dufresne and Eliza Ross.

Oliver, for the defendants the Benoits.

O'Gara, Q.C., for the defendants the Société.

Boyd, C.] [Dec. 23, 1885.

BLEAU v. BLEAU.

Vendor and purchaser—Sale of infant's estate—Title—12 Vict. c. 72—R. S. O. c. 40, s. 76.

Certain infant's lands were sold under an order which appeared upon its face to have been presented under the statutable jurisdiction of the Court of Chancery relating to the sale of infants' estates, 12 Vict. c. 72; R. S. O. c. 40, s. 76. The petition and order were entitled in the matter of the infants, and the subsequent proceedings were taken as provided by the general orders of the Court, the order for sale set out that what was being done was because it was beneficial to the infants, and the conveyance was executed by the Referee for the infants.

Held, that the Court would never allow the infants to recede from what was so done for their benefit, and that a subsequent purchaser cannot conjure up doubts as to jurisdiction when upon the face of the proceedings the statute authorizing the sale appears to have been followed. *Calvert* v. *Godfrey*, 6 Beav. 97, considered and distinguished.

R. M. Meredith, for the purchaser.

H. Becher, for the vendor.