

the bank stock was transferred in trust pursuant to above deed. The head office of the Ontario Bank is in Toronto.

Held, inasmuch as all the property settled appeared on the evidence to have become and to have been community property, and, although the bank stock must be held to have been at the time of the execution of the deed, and of the transfer to the trustees, situate in Ontario, notwithstanding that the Bank had for convenience sake made provisions for making transfers in Montreal; yet, since the trust deed did not purport to be a complete and consummated transfer of the property in the stock, but contained only a covenant to transfer, and was consummated afterwards, not in Ontario, but in Montreal, the case fell under the law of the owner's domicile, and applying that law, there was not a good transfer by the husband of the right of property in the stock.

Held, also, as to the money, that being at the time of the deed in Quebec, the validity of the transfer of it must depend on the law of Quebec, and under that law the transfer both as to the wife and the children was void. For, even if the wife's signing the deed amounted, as contended, to an acceptance by the children, it was only the acceptance of a promise and not of a gift.

Held, on the whole case, no property passed into the hands of the trustees by the transactions set forth.

The fact that a suit for the same matter is pending in Quebec, cannot be urged as a plea in bar to a suit for the same cause in this province.

S. H. Blake, Q.C., and G. Morphy, for the plaintiff.

J. Maclellan, Q.C., and R. E. Kingsford, for the husband.

Donovan, for the wife.

C. Moss, Q.C., for the infant defendants.

PRACTICE CASES.

Mr. Dalton, Q.C.]

[Dec. 8, 1882.]

RE WITHROW, POUCHER v. DONOVAN.

Garnishment—Mortgage.

One Withrow was an execution creditor of the plaintiff Poucher for deficiency after sale of lands in a mortgage suit. Poucher obtained a judgment against the defendant Donovan under Mechanics' Lien Act, whereby it was referred to the Master in Ordinary to ascertain the amount of plaintiff's claim, if any, the judgment being the usual one under the Act.

Pending the reference Withrow applied for an attaching order against whatever amount might be found due Poucher.

On the application Poucher alleged fraud in the mortgage sale proceedings, and sought, by way of cross motion under the O. J. A., to attack Withrow's judgment. It was also urged that nothing was yet ascertained to be due Poucher, and consequently there could be no attachment.

THE MASTER IN CHAMBERS.—It is most beneficial that suits be decided step by step, and that things should not be thrown into one general mass from the beginning, and an attempt be made to do justice upon the whole case in a summary manner.

In this garnishing proceeding the debtor sets up matter, not by direct statement either, but rather from suspicion and hints of what he would wish implied, attacking the plaintiff's judgment upon grounds prior to the judgment itself. I suppose he has a remedy if what he insinuates be true, but it is much better that he should directly attack the plaintiff's judgment, and have a decision upon what he complains of, then that he should be allowed to look back so far for a defence to this motion; it is better to keep them separate. Should he succeed in avoiding the plaintiff's judgment the plaintiff will be ordered to pay back not only what the plaintiff may receive in the present proceeding, but what he has received hitherto. The interests of other parties are concerned in having this garnishing proceedings decided. I must make the order to pay over what, if anything, may be found due, with costs.

F. Moffatt, for the execution creditors.

Rae, for plaintiff.

Caddick, for defendant.