

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

using with his alleged improvements, *a* and *b*, the alleged improvement *c*, which was a mere description of another mode of applying the first invention, and that the plaintiff was entitled to a perpetual injunction restraining him from so doing.

*Held* also, that the omission by the plaintiff of an immaterial element in his invention from the articles manufactured under his patent, did not affect his right to an injunction as against the defendant.

*W. Cassels*, for plaintiff.

*Moss*, Q.C., and *Kingsford*, for defendant.

Ferguson, J.]

[Jan. 15.]

GREEN V. WATSON.

*Patent right—Sale of right to territory—Covenant to warranty and defend—Breach.*

The plaintiffs covenanted with the defendants that B. would warrant and defend them in the manufacture of a patented machine within certain territory, in which they granted them the exclusive right to manufacture it, and that if B. neglected to protect and defend, then the royalty should cease. And defendants covenanted to pay a royalty therefore so long as they continued to manufacture.

*Held*, that the plaintiffs had not bound themselves that B. should prosecute with success all who infringed on the patent within the territory, but that he should protect them against all having a right to manufacture who should do so within the territory.

*Held*, also, that on breach of the plaintiff's covenant, the defendants might continue to manufacture without paying the royalty.

*Morphy* and *Cassels*, for plaintiff.

*Bethune*, Q.C., and *Barwick*, for defendants.

Ferguson, J.]

[Jan. 15.]

EMERY V. EMERY.

*Alimony—Separation—Wife's neglect to return.*

A wife who owned the house in which she lived with her husband, ordered him to leave it with threats of violence, and they lived separate for some years, the husband going to the United States of America, and becoming domiciled there. The wife knew of the husband's place of residence in the States, but did not offer to go to him.

*Held*, that she was not entitled to alimony. Where evidence might have been given at the trial, but was withheld by defendant's counsel, the Court refused a subsequent petition for leave to offer the same.

*J. H. Ferguson*, for plaintiff.

*W. Cassels*, for defendant.

Ferguson, J.]

[Jan. 15.]

HARPER V. CULBERT.

*Mortgagor—Mortgagee—Power of sale—Execution creditor—Fraudulent conveyance—ChamPERTY—Maintenance.*

The defendant Culbert, being mortgagee of of certain lands under a mortgage made by one E. J. Jackson in March, 1880, sold the lands under a power of sale, and realized more than sufficient to pay the mortgage debt.

The plaintiff's assignors, on 2nd May, 1879, had placed an execution against the mortgagor's lands in the hands of the sheriff, issued on a judgment recovered against the mortgagor.

On 28th November, 1878, however, the mortgagor had conveyed the equity of redemption to one Irwin, who, on 17 February, 1879, had conveyed it to the mortgagor's wife, Isabella Jackson; both these conveyances were voluntary.

On 1st March, 1879, one Mitchell recovered a judgment against E. J. Jackson and one Glennie, on a promissory note made by Jackson and endorsed by Glennie. On 9th September, 1879, Glennie paid the judgment and took an assignment thereof. Glennie then commenced a suit to set aside the conveyances to Irwin and Isabella Jackson as fraudulent, as against the creditors of E. J. Jackson.

Both the plaintiff's assignor and Glennie were served with notice of the exercise of the power of sale. The plaintiff's assignor paid no attention to it, nor did the plaintiff or his assignor make any claim to the surplus until after it had been paid over, but Glennie agreed to discontinue the suit to set aside the conveyances, on receiving from Isabella Jackson her consent or order authorising Culbert to pay his claims out of the surplus. This order or consent was given and the claims paid.

*Held*, that although the conveyances whereby the equity of redemption was vested in Isabella Jackson might be voidable for fraud, yet until they were declared void the mortgagee was en-