

C. of A.]

NOTES OF CASES.

[C. of A.]

the landlord, he should apply to the judge for direction.

Whenever the assignee is remaining in possession unreasonably long without realizing or satisfying the landlord, the latter may invoke the summary jurisdiction of the Court.

*R. Martin, Q. C.*, for the appellant.

*Hoyles* for the respondent.

*Appeal dismissed.*

Chy.]

[Dec. 1.]

SMITH V. DOYLE.

*Bill filed in behalf of plaintiff and all other creditors—Effect of.*

This was a suit brought by the assignee in insolvency of P. D., to impeach a sale of real estate to the defendant. The answer set up that before the proceedings in insolvency a bill was filed by W. S. and J. S., as execution creditors, in behalf of themselves and all other creditors who should contribute to the expenses of the suit, for the purpose of avoiding the conveyance in question, as a fraud upon creditors, and that after answer the bill was dismissed. It was alleged that the facts set up in the two bills were substantially the same; that the case made by each was the same, and that the defendant believed that the evidence, if this suit proceeded, would be similar in effect to that upon which the plea refusing relief was founded.

*Held*, that the decree was not a bar to this suit.

*Donovan* for the appellant.

*O'Donohoe* for the respondent.

*Appeal allowed.*

Chy.]

[Dec. 1.]

MUNRO V. SMART.

*Will—Construction of.*

The testatrix devised all the rents and profits of her estate to C., an unmarried daughter, so long as she remained unmarried, and upon her marriage the whole to be divided between her and her four sisters, but if she died unmarried the division was to be amongst her four sisters; and in case of either of these four dying before the marriage or death of C., the share of the one so dying to go to her children; and

then followed a provision that in case of the death of any of her "said" daughters, without leaving child or children, the share of such daughter was to be divided among the surviving daughters, and the children of deceased daughters.

*Held*, reversing the decree of the Court of Chancery, that it was clearly the intention of the testatrix that there should be a final distribution of the estate, upon the marriage of C., and that, on that event happening, each of the daughters took an immediate absolute interest.

*Crooks, Q. C.*, and *Cattanach* for the appellants.

*Boyd, Q. C.*, and *Moss* for the respondents.

*Appeal allowed.*

C. P.]

[Dec. 1.]

MILLER V. REID.

*Insolvency—Money paid within thirty days.*

A. sold his stock in trade and assets of all kinds to S., the sale being arranged and carried out by one R., to whom the cash portion of the purchase money was paid. R. afterwards, within thirty days of A.'s being declared insolvent, accepted and paid out of this purchase money two drafts drawn on him by the defendant, being the price of the goods for which A. was indebted to the defendant. The plaintiff, as assignee in insolvency of A., sued the defendant to recover back the money so paid him. The defendant set up that the drafts were drawn and the money paid by R. under a personal understanding contained in letters written to him by R.

*Held*, affirming the judgment of the C. P., that the defendant had probable cause for believing A. to be insolvent, and that the plaintiff was entitled to recover the money, which clearly belonged to the insolvent.

*Held*, also, that the acceptance was not a valuable security within the meaning of section 134, which the assignee was obliged to restore to the creditors, as a condition precedent to the prosecution of the suit.

*McKellar, Q. C.*, for the appellant.

*Walker* for the respondent.

*Appeal allowed.*