

C. L. Cham.]

NOTES OF CASES—GRESS V. EVANS ET AL.

[U. S. Rep.]

On the 11th September Martha Hurst, and Richard Hurst, her husband, made a chattel mortgage to the Dominion Bank to secure a previous indebtedness of Richard Hurst to the Bank. No future day was named for the payment, and the proviso to hold possession till default was struck out. A writ of attachment in insolvency was issued against Richard Hurst on the 4th October, 1875, and the assignee took possession of the mortgaged chattels then in the debtor's possession. The Bank claimed the chattels under the mortgage, which the assignee contended was void as against the creditors. The Bank thereupon petitioned for an order directing the assignee to deliver up the goods. It appeared also that the debtor had long previously been embarrassed; that most of his paper was under protest; that his real estate was also mortgaged to the Bank and others, and no pressure was shown to obtain the mortgage, and no promise of any future advance. The Judge in Insolvency declined to grant the order petitioned for, holding the mortgage void under sections 130 and 133.

HARRISON, C.J., under these circumstances, after an elaborate review of the English and Canadian authorities bearing on the subject, held, that the chattel mortgage was fraudulent and void as against creditors, and dismissed the appeal with costs.

A. Campbell for appellant.

E. G. Patterson contra.

IN RE DIXON V. SNARR ET AL. EXECUTORS.

(April 21, 1876.)

County Court Jurisdiction—Prohibition.

The plaintiff endorsed his writ in a County Court suit for the amount of account rendered, \$611.90, less credit by contra account of \$561.97, and claimed a balance of \$49.93. The defendant applied for a prohibition on the ground that the County Court had no jurisdiction. It was sworn by the plaintiff, but denied by the defendants, that there had been a settlement of accounts from time to time.

HARRISON, C.J.—Until the Judge of the County Court has heard the evidence and decided as to the facts involving the question of jurisdiction, prohibition cannot be granted. If, on the trial, he should find in favour of defendant's contention, the plaintiff might accept a verdict of \$200 in settlement of his account of \$611.90; but that would not prevent the defendant from suing for his account of \$585.37,

and the plaintiff could then only set off his judgment for \$200.

Bigelow & Hagle for plaintiff.

Osler contra.

SCHEIDER V. AGNEW ET AL.

(May 2, 1876.)

Con. Stat. U. C., cap. 24, section 41—Examination of debtor—Refusal to answer—Committal.

HARRISON, C.J., ordered the defendant, a judgment debtor, to be committed to the common gaol of his county for three months, for not making satisfactory answers on an examination, under above statute, respecting property which was liable to satisfy the judgment.

Osler for execution creditor.

Ritchie contra.

UNITED STATES REPORTS.

DISTRICT COURT, DAKOTA.

RUSSELL B. GRESS V. JAMES W. EVANS ET AL.

Purchaser in good faith—Unrecorded quit-claim deed Subsequent quit-claim deed—What title it conveys.

1. PURCHASER IN GOOD FAITH.—That in order to defeat a title under a prior unrecorded deed, the subsequent purchase must be in good faith, without notice, and for a valuable consideration.
2. TITLE BY SUBSEQUENT QUIT-CLAIM DEED.—The owner of a lot of land executed a quit-claim deed of it to a party in good faith: after the execution and delivery of this deed, and before it was recorded, he made another quit-claim deed of the same land to another party, conveying all his interest in the land, with covenants against the acts of the grantor, which deed was recorded first. Held, that the grantor by the first deed as between the parties passed all the interest he had in the land, and this, although it was not recorded; that the grantee in the second deed only took the interest which the grantor had in the land at the time of the execution of the deed, and having conveyed it away, he had no interest in the land to pass by the second deed; that the covenant against the acts of the grantor in the second deed did not affect the result in this particular.—

[*Chicago Legal News*, 1876, p. 333.]

The opinion of the Court was delivered by BENNETT, J.

This action is brought by plaintiff to quiet his title in and to the following described real estate, situated in the county of Minnehaha, Dakota territory, to wit: The south-east quarter of section nine (9), in township one hundred and one (101), of range forty-nine (49), and to