

agreed, and the plaintiff left the premises, the defendant and their only child continuing to reside thereon. The action was brought by the plaintiff to recover possession, and the defendant claimed to be allowed a lien for improvements, but as to this latter claim, Rose, J., who delivered the judgment of the court, said: "I am also unable to see how his claim for moneys expended upon the place can be allowed. They were not made under any mistake as to title, and must, I think, be held to have been made with the knowledge that the property would reap the benefit, whenever possession passed away from him."

ASSIGNMENTS FOR BENEFIT OF CREDITORS.

The case of *Klappfer v. Gardner*, which was recently decided by the Supreme Court (see *ante* p. 499), has set at rest an important point regarding the law relating to assignments for the benefit of creditors, viz., whether a creditor, who has unsuccessfully disputed the validity of the assignment, can afterwards claim the benefit of it. The Supreme Court has answered this question in the affirmative. In this case the creditors who had disputed the assignment had failed in the contest on the ground that they were estopped by reason of their having previously assented to it; and although they failed in upsetting the assignment on the ground that they had previously assented to it, yet, when they afterwards claimed a dividend under it, they were met with the answer, that they had forfeited the benefit of it by their unsuccessful attack upon its validity. In the court of first instance (10 O. R. 415), Wilson, C.J., and Armour, J., were of opinion that the mere bringing of the adverse proceeding of itself constituted a forfeiture of the benefits of the assignment, entirely irrespective of the grounds upon which those proceedings were determined; but O'Connor, J., dissented from this conclusion, on the ground that the adverse proceedings had not been disposed of on their merits, and, as he forcibly put it, the opposite conclusion was the result of "reasoning in a vicious circle with a vengeance." But, though the common sense of the late O'Connor, J., appears to have rebelled against what he conceived to be a "palpably absurd and unjust" conclusion, owing to the peculiar circumstances of the case, he seems to have coincided with the rest of the court as to the general principles which they laid down. The Court of Appeal, however, though adopting the reasoning of O'Connor in this particular case, were able also to support their judgment reversing the Queen's Bench Divisional Court, on grounds having a more general application.

Osler, J.A., who delivered the judgment of the Court of Appeal, very clearly and ably points out the plain distinction which existed between the case in hand, and the case of *Joseph v. Bostwick*, 7 Gr. 332, and the English authority on which that case was decided, viz., *Field v. Donoughmore*, 1 Dr. & W. 227. In *Klappfer v. Gardner* the assignment was unconditional, whereas in the cases above referred to, and in the later cases of *Watson v. Knight*, 19 Beav. 369, and *In re Meredith, Meredith v. Facey*, 29 Chy. D. 745, to the same effect, the assignment was subject to a condition, which the debtor could lawfully impose, but with which the con-