

Ct. of Appeal.]

NOTES OF CASES.

[Ct. of Appeal.]

and (3) that it was not necessary to set up the registration of the assignment in the bill.

TAYLOR V. TAYLOR ET AL.

From CHANCERY.]

[Feb. 20.]

Principal and Agent—Trustee and cestui que trust.

In 1847, the plaintiff being about to leave Canada, conveyed certain lands in which he had a right of pre-emption, to his brother—one of the above named defendants. Only a small portion of the purchase money had been paid, and no provision was made by the plaintiff for the payment of the balance. In April, 1851, the brother assigned the land to the plaintiff without consideration and without his knowledge, for the purpose either of denying his title to the land in a suit brought by one Canniffe, who was in possession of the land claiming adversely; or to prevent the bringing of a *qui tam* action. The brother paid the residue of the purchase money without the plaintiff's aid or knowledge, and a deed issued in the plaintiff's name. In October of the same year, the plaintiff executed a power of attorney, enabling him to sell the land in question, mentioning it specifically, and a general power to sell or lease any lands which he owned in Canada. In 1856, the brother conveyed the property to W. for the alleged consideration of \$1000; who immediately reconveyed one-half the land to the brother for the alleged consideration of \$200. The plaintiff returned to Canada in 1873, and filed a bill impeaching the transaction between his brother and W., and seeking to have them declared trustees for him.

At the hearing the plaintiff and his brother compromised their difficulties.

The Court (Harrison, C.J., Burton, Patterson, J.J.A., Hagarty, C.J.C.P. dissenting), *held*, that the defendant Taylor was the beneficial owner of the land at the time of the conveyance to Wallbridge, and refused to set aside the conveyance.

Bethune, Q.C., (with him *Dickson*,) for the appellant.

Wallbridge, Q.C., and *Fitzgerald*, Q.C., for the respondent Wallbridge.

Appeal dismissed without costs.

MONAHAN V. OKE.

From C.C., Northumberland & Durham.]

[Feb. 20.]

Assumpsit—Illegitimate children—C.S. U.C. cap. 77, sec. 4.

Held, (Burton, Patterson, Moss, J.J.A., and Galt, J.) affirming the judgment of the County

Court, that an action of assumpsit will lie against an executor for the maintenance of an illegitimate child of the testator, under C.S. U.C. cap. 77, sec. 4.

Benson, Q.C., for the appellant.

Osler for the respondent.

Appeal dismissed.

MCARTHUR V. SMITH.

From C.C., Wentworth.]

[Feb. 20.]

Bills and notes—Mutual insurance company.

Held, (Burton, Patterson, Moss, J.J.A., and Galt, J.) that a promissory note made to a Mutual Insurance Company, or its officers, under C.S. U.C. 52, sec. 21, is negotiable.

J. K. Kerr, Q.C., for the appeal.

Osler for the respondent.

Appeal allowed.

WALKER V. HYMAN.

From C.C., Middlesex.]

[Feb. 20.]

Estoppel.

The plaintiffs were makers of safes at Toronto. One Hergert of London, gave them a written order for a safe, for which he was to give his promissory notes at four and six months. The order contained a direction to have his name painted on the front of the safe, and it was stipulated on a printed form, furnished by the plaintiffs and appended to the order, that no title to the safe was to pass to Hergert until full payment of the price agreed upon. In compliance with the order, the plaintiffs had Hergert's name painted on the safe, and delivered it to him in August, 1876. Hergert gave his notes at four and six months in payment. In November of the same year, the defendant purchased the safe—after having first searched the office of the Clerk of the County Court for encumbrances against it, and believing it to belong to Hergert.

The Court, (Burton, Moss, J.J.A., and Galt, J., Patterson, J.A., dissenting,) that the plaintiffs were not estopped from asserting their ownership, and that they were entitled to recover the amount due on the safe.

Merritt for the appellant.

MacMahon, Q.C., for the respondent.

Appeal allowed.

MILLER V. HEWITT.

From C.C., YORK.]

[Feb. 20.]

Married woman—Insolvency.

A married woman transferred certain shares, which formed part of her separate estate, to her