on the part of the defendant, the transaction was protected. *Brayley* v. *Ellis*, 1 Ont. R. 19, followed.

Moss, Q.C., (*Hopkins* with him). for plaintiff.
Blake, Q.C., for defendant McAlpine.

Ferguson, J.] [June 12.

Mortgage—Interest—Forfeiture.

DOWNEY v. PARNELL.

A mortgage, on which suit was brought, contained following proviso :—"Provided this mortgage to be void on payment of $2,500 of lawful money of Canada, with interest at 10% per annum, as follows : at the end of five years from the date hereof, with interest at the rate aforesaid to be paid half yearly ; but should default be made in payment of the principal money or interest, or any part thereof, respectively, then the amount so overdue and unpaid to bear interest at the rate of 10% per annum until paid."

Held, the above contract in regard to an increased rate of interest is not invalid, the matter being one of contract simply, and the contract not being in violation of any existing law ; nor is it relievable against on the ground of forfeiture.

Hoyles, for the mortgagee.
Hoskin, Q.C., contra.

Boyd, C.] [May 31.

DAVIS v. WICKSON.

Fraudulent preference—Remedy—13 Eliz., c. 5—R. S. O., c. 118—R.. S. O., c. 119.

In this action the plaintiff, who had obtained judgment and issued execution thereon against the defendant Foster, claimed to have certain securities and a certain judgment obtained by the defendant Wickson, declared to be fraudulent and void on the ground of undue preferencce, and to have them set aside. He further sought to make Wickson account for the proceeds of the said securities received by him. Wickson obtained the securities and recovered the judgment as treasurer of certain trust funds of a certain public body to which Foster was indebted. It was admitted that the *corpus* of the property had passed beyond Wickson's control, and it was proved that before litigation he had paid over the money to his principals, who were not before the Court.

Held, the right of the plaintiff in these cases is to have any impediment removed or declared invalid which intercepts the action of his writs of execution. So long as the property of his execution debtor remains distinguishable, and so long as no purchaser for value, without notice, intervenes, so long may the Court award him relief against that property in the hands of fraudulent or voluntary holders. But when, as here, the first holder sells the property obtained from the debtor, and receives the proceeds in such a shape as that they cannot be ear-marked, then there is no jurisdiction to go beyond the further remedy which the Statute of Elizabeth prescribes, namely, that all parties to fraudulent conveyances, aliening or assigning thereunder, shall forfeit a year's value of the lands and the whole of the goods, whereof half shall go to the Crown and half to the party aggrieved, to be recovered by action of debt as mentioned in sect. 2 of the Act.

The omission of the word "him" at the conclusion of the affidavit of *bona fides* registered with a chattel mortgage has the effect of destroying the security as against an execution creditor who has seized while the goods remained in *statu quo*, but does not impair the instrument as between the parties.

W. Francis, (*Wardrop*, with him,) for the plaintiff.

Blake, Q.C., (*Thomson*, with him,) for the defendant Wickson.

W. A. Reeve, for the defendant Boustead.

CHAMBERS.

Boyd, C.] [May 8.

GROOM v. DARLINGTON.

Administration—Cases within G. O. ch. 638, 639—Practice.

Motion for the administration of the estate of Wm. D. Darlington by plaintiff, Henry Groom, who claimed to be a creditor of the estate, by reason of the support and maintenance by him of the testator's wife (in England), who had died shortly before the testator.