

been intended that this should have been done because it was contemplated that the shares should be sold in the same market for defendant's benefit at a moment's notice in case of an increase in price satisfactory to him.

2. There was an actual sale of the said shares on account of defendant regularly made, according to the usage of trade in that behalf.

3. The plaintiffs were entitled under the terms of the notice sent to the defendant to sell the shares without notice to him when the margin was gone, as the defendant, not having made objection to these terms, must be taken after a reasonable time, to have assented to them.

Stewart Tupper, K.C., and *Phippen*, for plaintiffs. *Howell*, K.C., and *Phillipps*, for defendant.

Perdue, J.]

LOGAN V. REA.

[Nov. 26.

Fraudulent conveyance—Exemptions—Lien of registered judgment as against land—Proceedings to realize while debtor in occupation—Declaration of right without order for sale—The Judgments Act, R.S.M. 1902, c. 91, s. 9.

This action was brought to have it declared that a certain parcel of land conveyed by the debtor to her son before the recovery of the plaintiff's judgment in reality belonged to the debtor, and that the son held the land only as trustee for the mother and had no interest in it, and that the judgment formed a lien or charge on the land, and asked that the land be sold to satisfy the judgment. Defendants admitted that the land was the mother's and that the son had no interest in it and that the conveyance had been made solely because the mother thought she might thereby prevent the sale of the land to realize the plaintiff's claim, but they set up and proved that it was her actual residence and home, and claimed that as it did not exceed \$1,500 in value it was exempt from the proceedings, by virtue of R.S.M. 1902, c. 91, s. 9. It was urged on behalf of the plaintiff that the conveyance was fraudulent and void as against him, and that the debtor had by conveying the land to her son deprived herself of the benefit of the exemption, according to *Roberts v. Hartley*, 14 M.R. 284, and *Merchants' Bank v. McKenzie*, 13 M.R. 19.

Held, that the plaintiff was entitled to a declaration that the land was the property of the debtor, so that, if the exemption should at any time lapse, the judgment might be enforced against the land, but was not entitled to a present sale of the land to realize his judgment.

Roberts v. Hartley distinguished on the ground that there both the grantor and grantee united in asserting the reality of the transfer and no trust in favour of the grantor was alleged or proved by him. The right given by The Judgments Act to a debtor to claim exemption in respect of his actual residence is clear and positive and applies to his interest in the property so long as he continues to occupy it, whether that interest is