

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

conveyed to H., through whom the plaintiff claimed. Shortly after the conveyance to T., he told A. that he would not live on the land or have anything to do with it. A. then procured some one to look after it for her; and about sixteen years before this action two sons of A. went into possession of the west half of the lot on the understanding that they were to have the whole land, each paying her \$50 on account, but no deed was executed till 1875. They paid taxes on the whole lot, and cut timber at times on the east half. In 1871 E. having obtained a conveyance of the east half, had a line run between the east and west halves, and cut timber on the east half. An action of trespass was brought against him by A.'s sons, which he settled. The east half was neither cleared, fenced nor cultivated.

Held, reversing the judgment of the Court below, 2 O. R. 352, OSLER, J.A., dissenting, that the acts of A.'s sons upon the east half were such actual possession and enjoyment thereof within the meaning of the proviso at the end of sec. 13 of R. S. O., ch. 128, as to prevent that act from having the effect of making the defective deed valid.

Per OSLER, J.A.—The actual possession and enjoyment of the statute is such a possession as would suffice to bar the owner under the Statute of Limitations.

Dickson, Q.C., and G. H. Watson, for the appellant.

G. T. Blackstock, for respondent.

CHANCERY DIVISION.

Full Court.]

[Feb. 27.]

REAL ESTATE LOAN CO. v. YORKVILLE AND VAUGHAN ROAD CO. ET AL.

Conveyance in fraud of creditor—"Creditors"—*Locus standi*—13 Eliz. c. 5.

The plaintiffs sought to set aside a certain conveyance dated Feb. 27th, 1880, and made by the M. Society to the Y. Company, as executed in fraud of themselves as creditors.

It appeared that the plaintiffs had not recovered judgment for the debt, in respect of which they claimed to be creditors, until July 23rd, 1883, but that this was a judgment in an action brought for damages for certain mis-

representations made to them by the M. Society in September, 1879, which misrepresentations had induced the plaintiffs on that day to enter into a contract with the M. Society to purchase certain mortgages from them, and transfer certain shares of their capital stock to the M. Society, which stock they did not, however, actually transfer until after Feb. 27th, 1880.

Held, *per* BOYD, C., that the plaintiffs did not really become creditors of the M. Society until they recovered judgment, and it was illusory to endeavour to trace back the origin of this claim to the alleged misrepresentations, which were not acted upon until after the impeached conveyance, and whatever cause of action the plaintiffs then had they did not prosecute it, or become creditors in respect of it. The legal and only position of the plaintiffs was that of subsequent creditors, and it was not pretended that the conveyance was given with a view to defeat subsequent creditors, and failing that the plaintiffs had no *locus standi* to recover under 13 Eliz. c. 13, even if the impeached conveyance was held to be of a voluntary character as to which *quære*.

Held, *per* PROUDFOOT, J., that though an action for damages could not be brought until the damage accrued, yet the agreement of Sept., 1879, being based on misrepresentations of the M. Society, the plaintiffs' right dated from the agreement. It was not necessary for the plaintiffs to be creditors, it was sufficient for them to have a right of action, and the impeached conveyance being voluntary they were entitled to succeed.

The Court being divided, judgment of judge of first instance affirmed.

Lash, Q.C., and A. Galt, for appellants.

McMichael, Q.C., for respondents.

Divisional Court.]

[March 21]

RE FOX, AND THE SOUTH HALF OF LOT NO. 1 IN THE 10TH CON. OF DOWNIE.

Quieting title—*Devise*—*Condition*—*Power of sale*.

The petitioner, in a quieting title application, claimed title as devisee under a will which contained the following provisions:—"Secondly, I devise to my son, J. F., the south half of Lot No. 1 in the 10th concession