

Chan.]

NOTES OF CASES.

[Char.]

ment of accounts, and the former became insolvent. At the date of the insolvency there existed a right of set-off, in favor of the mortgagor for a balance due him on their general dealings.

*Held*,—affirming the finding of the Master—that such right of set-off passed to the official assignee of the mortgagor, and that a transferee of the security took it subject to the equity.

As between mortgagor and mortgagee, there is nothing to prevent the mortgagee taking possession at a fair and reasonable rent agreed upon between them. In such a case the mortgagee is not a "mortgagee in possession" in the technical sense of the term.

In such a case, however, a subsequent incumbrancer—prior to the first mortgagee, entering into such possession—is not bound by such an arrangement; and the Master may charge the first mortgagee with a fair occupation rent although it exceeds that stipulated for.

*J. MacLennan, Q.C.*, for plaintiff.

*G. M. Ray* for defendant.

Proudfoot, V. C.]

[June 11.]

ROBLIN V. ROBLIN.

*Marriage when one party intoxicated—Conspiracy to procure a marriage—Subsequent acknowledgment of validity of marriage—Alimony—Undertaking to receive wife—Costs.*

In order to render void a marriage, otherwise valid, on the ground that the man was intoxicated, it must be shown that there was such a state of intoxication as to deprive him of all sense and volition, and to render him incapable of understanding what he was about.

*Semble*—A combination amongst persons friendly to a woman to induce a man to consent to marry her, it not being shown that she had done anything to procure her friends to do any improper act in order to bring about the consent, would not avoid the marriage.

A marriage entered into while the man is so intoxicated as to be incapable of understanding what he is about, is voidable only, and may be ratified and confirmed.

Three years after the ceremony of marriage which the man alleged he was induced to enter into while under arrest and intoxicated, an action at law was brought against him for

necessaries furnished to the woman, and for expenses for the burial of her child in which the question of the validity of the marriage was distinctly put in issue, the man signed a memorandum, endorsed on the record in which he admitted the existence and validity of the marriage, and consented to a verdict for the plaintiff in the action.

*Held*,—That if the marriage was previously voidable it was thereby confirmed.

In a suit by the woman for alimony brought eighteen years after the marriage on the ground of refusal by the man to receive her, he set up the invalidity of the marriage; but while under examination stated that if it was determined that she was his wife he would receive her as such; the Court (Proudfoot, V.C.) while finding there was a valid marriage, decreed that upon the defendant undertaking to receive the plaintiff as his wife, the bill should be dismissed, but ordered the defendant to pay the costs between solicitor and client.

*C. Moss*, for plaintiff.

*Walbridge, Q.C.*, and *S. H. Blake, Q.C.*, for defendant.

Spragge, C. J. O.\*]

[June 11.]

JESSUP V. GRAND TRUNK RAILWAY CO.

*Railway Co.—Land acquired on condition of using it for station.—"Place," meaning of.*

The plaintiff being the owner of a tract of land near Prescott, on the 29th of October, 1869, agreed with the contractors engaged in the laying out of the railway of the defendants, and in acquiring lands and rights of way for the construction thereof, that in consideration of their placing the station of the railway for Prescott upon his land, to convey to the contractors, their heirs, &c., six acres of such land for that purpose, and, if necessary, for the purposes of such station, to allow them to take an additional quantity, not exceeding in all ten acres. The station was erected in 1855 on the said lands, and used by the company until 1864 when it was closed, and a station selected about  $1\frac{1}{2}$  miles from the plaintiff's lands, and station buildings erected thereon, in consequence of which the plaintiff's remaining lands became greatly depreciated in value.

\* These cases were heard by the present Chief Justice Ontario whilst Chancellor.