

C. of A.]

NOTES OF CASES.

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accordance with a request made by the sureties just before the issue of the writ of attachment. It appeared that when the sureties made this request, neither they nor the creditor knew or had probable cause for believing that the insolvent was unable to meet his engagements in full.

*Held*, reversing the decree of Proudfoot, V.C., that the payment was not void within the meaning of the Insolvent Act.

*E. Meredith*, Q. C., for the appellants.

*J. A. Boyd*, Q. C., for the respondents.

*Appeal allowed.*

From C. C. Carleton.] [Feb. 3.

KELLY V. OTTAWA STREET RAILWAY CO.

*Limitation of action against Railway Co.—*

*C. S. C. c. 66, s. 83.*

The plaintiff sued the defendants for an injury sustained by him while engaged in his lawful occupation upon the street by the negligent management of the defendants' car, and the unskilful or reckless driving of their servant.

*Held*, reversing the judgment of the County Court, that the 83rd section of the Railway Act, which was incorporated with the defendants' special Act, applied to a suit of this nature, and the action not having been brought within six months, the plaintiff must fail.

*Snelling* for the appellants.

*Shepley* for the respondent.

*Appeal allowed.*

From C. C. York.] [Feb. 3.

SHEPLEY V. HURD.

*Action on note—Plea that plaintiff not lawful holder.*

A note having been placed in the hands of a firm of solicitors to sue, they got the authority of the plaintiff, who was then a clerk in their office, to use his name for the purpose of the suit, as the holder, for some reason, wished to take proceedings without his name appearing.

*Held*, reversing the judgment of the County Court, that a plea that the plaintiff was not the lawful holder was bad.

*Semble* that it is not essential that the

plaintiff should have had physical possession of the note.

*Bain*, for the appellants.

*McMichael*, Q. C., for the respondents.

From Chy.] [Feb. 3.

RUSSELL V. ROMANES.

*Specific performance.*

The bill was filed to enforce specific performance of an agreement to sell certain land, made by one R. since deceased. The original agreement was cancelled, and on the 22nd May, 1866, another agreement contained in a lease of the land from R. to the plaintiff was substituted therefor. In November of 1865, when the original agreement was entered into, R. who held two mortgages on the land in question, thought he had obtained an absolute title thereto, by proceedings on a foreclosure suit on these mortgages. It afterwards, however, appeared that long prior to the first of the mortgages held by R., the mortgagor T. H. had by a voluntary deed conveyed 50 acres of the land to his son E. H. subsequently to the first mortgage to R., but prior to the second mortgage, E. H. mortgaged the 50 acres to one A. E. H. was not made a party to the foreclosure suit, but A. was served with notice of the proceedings in the Master's office, and not having appeared, he and the mortgagor were declared foreclosed. Soon after the above agreement for sale, E. H.'s outstanding equity of redemption was discovered, and in September, 1866, R. filed a bill against T. H., E. H. and A. for the foreclosure of his two mortgages against all these defendants, when a decree was made declaring the deed to E. H. to be void against R., and that A.'s mortgage was subject to the first mortgage, but had priority over the second mortgage held by R., and he was directed to pay into Court a certain sum as the price of redemption, which payment was made at the appointed time.

It appeared that the plaintiff had actual notice of E. H.'s outstanding equity of redemption soon after the substituted agreement, and before he made any improvements; and that he made them in reliance upon R. holding him harmless.