Sawyer v. Linton.

(April 23, 1876.)

Demurrer—Fraudulent conveyance—Certainty of allegation.

The plaintiffs, who sued as well on behalf, &c., by their bill charged that defendant Wm. Linton, being owner in fee of land in Haldimand, did, on the 2nd of January, 1872, for a "professed" valuable consideration, convey the same to the defendant John Linton (his son), who still owned the same; that in January, 1873, the said defendant Wm. Linton, and the defendant Thomas Linton, became indebted to the plaintiffs in the sum of $450, for which they gave plaintiffs their promissory notes according to the terms of a contract between the parties; that on the 24th of January, 1876, plaintiffs recovered judgment on certain of the said promissory notes, and executions were issued thereon against goods and lands which remained in the hands of the Sheriff unsatisfied, the Sheriff being unable to find any property out of which he could make the amount of the writs. The bill further charged that the said conveyance "was made with intent on the part of the said defendants to defeat, delay, and defraud the said plaintiffs and the other said creditors," and prayed relief accordingly.

The defendants demurred for want of Equity, contending that the allegation of want of consideration was not sufficient, the words of the statute being "a pretended consideration;" that the bill itself alleged that the grantee, John Linton, still owned the land, which could not be the case if the conveyance were fraudulent; that it required to be stated that the conveyance was made with intent to defeat, hinder and delay the creditors, and that the whole relief now sought could have been obtained in the action at Common Law, under he ruling in *Knox* v. *Travers*, ante p. 148, the bill shewing that judgment had not been recovered until January, 1876.

Blake, V.C., overruled the demurrer, considering the statements of the bill sufficient to satisfy the requirements of the Statute of Frauds, both as to the want of consideration and the fraudulent intentions of the parties to the deed; that the bill correctly asserted the title to be in John Linton, for as between the parties to a fraudulent conveyance, the title did vest in the grantee; and as to relief having been obtainable in the action at law, it was impossible to say, from the allegations in the bill, that the action had not been commenced before the passing of the Administration of Justice Act, although judgment was not recovered until long after that date.

Moss for demurrer.

McQuesten contra.

COMMON LAW CHAMBERS.

Reg. ex rel. Regis v. Cusac et al.

(March 20, 1876.)

Municipal election—Want of qualification—Acquiescence of relator.

Harrison, C.J.—An elector who, at a nomination meeting, acquiesces in a statement which, if true, would entitle the defendants to sit, will not be heard afterwards as a relator, to object that in fact the statement was incorrect, and that the defendants were therefore disentitled.

Osler for relator.

G. D. Boulton, contra.

Gordon et al. v. G.W.R. Co.

(March 20, 1876.)

Appeal—Application for further time.

Application to extend the time for giving notice of intention to appeal to the Court of Appeal, on the ground that the attorney for the party desiring to appeal had omitted to give the required notice within the prescribed fourteen days. There had been a delay of a month in making the application.

Harrison, C.J., *held* that the mere statement of an unexplained "oversight" on the part of the attorney was an insufficient reason for granting the leave, though it might be different if there were an important question of law involved as to which there was a conflict between the Courts; but he did not think that was the case here.

J. B. Read for application.

D. B. Read, Q.C., contra.

In re Ladouceur v. Salter.

(March 21, 1876.)

Division Courts—Service of summons out of jurisdiction—Residence—Con. Stat. U.C., cap. 19, sections 71, 79.

Harrison, C.J.—There is nothing in the Division Court Act to prevent a bailiff serving a summons out of the jurisdiction, though he is not obliged to do so. It is immaterial that a defendant is without the jurisdiction at the time he is served, if at such time he is in law a *resident* within the jurisdiction. In this case