

Chan.]

NOTES OF CASES.

[Chan.

the coal as having been deposited by the bank. The partnership having become insolvent, the assignee sought to hold the coal as the goods of the insolvent, and filed a bill impeaching the validity of the receipt. It appeared that the insolvents had mixed the coal with other coal, and had sold some of it, and that all the coal in the premises was not sufficient to answer the quantity comprised in the receipt. Under these circumstances it was *held*, that the bank had a right as against the assignee—as it would have had against the insolvents—to hold all the coal in store of the description named in the receipt, and also to payment out of the money, the proceeds of the coal which had been sold.

D. McCarthy, Q.C., and *Kingsford*, for plaintiff.
C. Robinson, Q.C., and *J. F. Smith*, for defendants.

Spragge, C.]

[May 21.

MOORE V. BUCHNER.

Arbitration and award—Jurisdiction—Time for enforcing award—Costs.

In answer to a bill to enforce an award, the defendants submitted to the Court a number of matters as objections to the award, and asked a reference back to the arbitrator with certain instructions, or a reference to the Master as to the matters in dispute. At the hearing on bill and answer, the defendant objected (1), to the jurisdiction of this Court, the submission providing that the submission and award should be made a rule of the Queen's Bench or Common Pleas.—(2), that the filing of the bill was premature, the time for moving against the award not having expired.

Held, that a proceeding to enforce an award must be taken after the time for moving against it has elapsed.

Held, also, that the objection to the jurisdiction would have prevailed if properly taken, as the parties to the submission had agreed upon their *forum*; but the defendant having submitted to the jurisdiction by his answer, and himself asked the intervention of the Court, could not now be heard to object.

It appearing that there was no reason for filing a bill instead of proceeding in the usual way,

Held, that the plaintiff was entitled only to such costs as he would have been entitled to if

he had proceeded to enforce the award under the statute.

McClive, for plaintiff.

Plumb, for defendant.

Spragge, C.]

[May 25.

ROSS V. POMEROY.

Statutes of limitations—R. S. O. cap. 108.

The plaintiff, administrator of a mortgagee, filed his bill against the mortgagor on or before 20th October, 1864. After service, and on 15th November, 1864, an arrangement was entered into between the parties, whereby the plaintiff took notes for the mortgage money, the first payable 1st June, 1866, and the others in the six following years. Proceedings on the mortgage were then suspended. Pomeroy made a payment in June, 1867, and died 16th July, 1869. The notes were not paid. The suit was then, on 29th August, 1879, revived against the infant heir of the mortgagor.

Held, that the plaintiff was barred by R.S.O. cap. 108, sec. 23, but in case of the plaintiff's desiring to obtain the benefit of a judgment recovered against Pomeroy, the bill was retained as against the infant defendant, as he would be a proper party in a proceeding against Pomeroy's personal representative.

MacLennan, Q. C., for plaintiff.

Plumb, for defendant.

Boyd, C.]

[May 18.

MCLELLAN V. MCLELLAN.

Election—Dower—Provision by will.

A testator devised to his widow his "house and orchard for herself and her children as long as she may live;" and to his son, *Duncan*, all his right, title, and interest, in and to the said land, and all implements thereon, "at the death of my wife, as aforesaid, on condition that he shall provide for her the necessary comfort and supplies for her board and maintenance, he, my son, *Duncan*, holding possession of the land from the time of my decease, subject to the proviso aforesaid."

Held, that the widow was not entitled to the provision made for her by the will, and also to dower out of the land devised, but that she was put to her election in respect thereof.

Hoyles, for plaintiff.

J. Hoskin, Q. C., and *A. Hoskin*, Q. C., for defendants.