

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

stole the boat, the cooking stove, and a lot of other things and sold them." The secretary of the co. had previously received a letter stating that the plaintiff had done what the defendant said. The defendant, by his statement of defence, denied using the words, and gave evidence to the effect at the trial, but proposed also to give evidence that whatever the words used were, he honestly believed them to be true, and leave was asked to amend by setting this up. The judge who tried the case held that the occasion was not privileged, and refused to allow the amendment, and on a motion for a new trial it was

Held (reversing O'CONNOR, J.), that the occasion was privileged, and a new trial was granted to give the plaintiff an opportunity to prove malice.

Aylesworth, for the motion.

D. J. Donohue, contra.

Proudfoot, J.]

[February 2.]

STEWART V. GAGE.

Assignment for benefit of creditors—Judgment against assignor after assignment—Proof of claim—Statute of Limitations—Balancing of accounts—Payments on account—Appropriation of payments—Interest.

S. was assignee of J. E., and G. was assignee of E. H. E. Before the assignments J. E. was a creditor of E. H. E., both on an account for money lent, and as holder of certain promissory notes. After the assignments, S. obtained a judgment against E. H. E., but G. refused to recognize S. as a creditor on E. H. E.'s estate by virtue of the judgment. S. then brought an action against G. on said judgment, and asked an account of G.'s dealings with the estate of E. H. E.; G. set up the Statute of Limitations. On a reference to a Master he found (1) That the judgment was an answer to the defence of the Statute of Limitations. (2) That there had been a balancing of accounts between J. E. and E. H. E. as to the accounts before E. H. E.'s assignment, and as to the notes after E. H. E.'s assignment, and that each balancing of accounts was such a balancing as prevented the operation of the Statute of Limitations. (3) That before the assignments, and within six years of action

brought, E. H. E. paid several sums to J. E. on general account, and that such payments as far as the general account outside of the notes was concerned, prevented the operation of the Statute of Limitations. (4) That E. H. E. agreed to pay interest to J. E., and he allowed it to him. (5) That he disallowed some of the items of the judgment as having been proved outside of the judgment. (6) That he disallowed certain sums of money omitted from plaintiff's claim—although proved to his satisfaction—as outside the scope of the reference.

On an appeal from the Master, it was

Held, that the judgment recovered against E. H. E. after his assignment in an action in which G. was not a party was not even *prima facie* evidence against G. *Eccles v. Lowry*, 23 Gr. 167, considered.

That the balancing of accounts before the assignments upon the general account, and the payments on account were sufficient to prevent the operation of the Statute.

That the balancing of accounts after the assignment as to the notes did not prevent the operation of the Statute.

That the payments made on general account being appropriated to the account of the whole indebtedness including the notes, the notes were not barred by the Statute.

That the interest was properly allowed—as it was included in the balancing of accounts, and the notes were payable with interest.

Marsh, for the plaintiff.

W. M. Clark, for the defendant.

Ferguson, J.]

[February 12.]

THE HAMILTON AND MILTON ROAD CO. V. RASPBERRY.

Statutory remedy for penalty—Injunction.

On a motion by a road co. for an injunction to restrain R. from passing through toll gates without paying the tolls when demanded, it was contended that because there was a statutory remedy for the recovery of a penalty for each offence under sec. 129 of R. S. O. c. 152 the court would not interfere by way of injunction.

Held, that if the plaintiffs establish a *prima facie* case in regard to the rights they claim there is jurisdiction to interfere by way of