&c., of the said Edward Bowen." Then follows a covenant between the present plaintiffs and Philip Cheppard that he shall have full power and authority to call for and receive the rents and profits of the said house and barn, and then a further covenant on the part of Philip Cheppard acknowledging, testifying, and declaring that the uses and trusts upon which the first conveyance was executed were and are that the said house and barn and all rents and profits arising therefrom shall be paid to the said Mary Ann Bowen during her lifetime, and independent of her said husband, and after her death be applied towards the maintenance and support of the said Eliza Jane Bowen, &c.

Dodd, J.—Whatever claims or title plaintiff, have under the gift of Cheppard to Mary Ann Bowen in 1831, they are estopped from setting it up by their deed to him in October 1838. But from that time to the trespass complained of, they have been in the undisputed possession of the property enclosed by a stone and wood ence, and recognized by Cheppard at a survey of his land by Campbell, who when they came to the 5 acre lot, did not include it in the survey, Cheppard telling the Surveyor that was the lot he had given to Mary Ann Bowen; when Cheppard died not appear, and under the devise in his will to the defendant, the latter did not attempt to dispute the possession of the plaintiffs until April, 1870. The deed of 1838 to Cheppard, from the plaintiffs, made them tenants at will, and at the expiration of one year from that date, the possession become adverse. The first section of the Act of 1866 enacts that no land or rent can be recovered, but within twenty years after the right of action accrued to the claimant, or some person whose estate he claims. By sec. 3, in the case of a tenant at will, the right shall be deemed to have accrued at the end of one year from its commencement. The right in this case under the statute for Cheppard to recover the land commenced in October 1839, and in October 1859 he would be excluded from recovering or maintaining the action, and the defendant who claims through him, cannot be in a better position. The plaintiffs have held adversely against this testator and the defendant over thirty-one years. The Act 3 & 4 Will. IV. c. 27, the provisions of which are similar to the Provincial Act of 1866, sections 2 & 3, has done away with the doctrine of non-adverse possession, and the question now is whether twenty years have elapsed since the right accrued, whatever the nature of the possession. Except in the cases mentioned in sec. 15 of the Act, which do not apply to the case under consideration, the effect of the Act is not merely to bar the remedy, but to bind and transfer the estate, *Scott* v., 3 Dan. & War, 388, *Nepean* v. *Doe*, 2, M. & W. 894, *Cullen* v. *Doe* 11 Ad. & E. 1008. The possession in this case is ample to maintain the action against the defendant, who is a wrong-doer. I therefore think the verdict for the plaintiff, taken by consent, for $4, should remain, and that the plaintiffs should have the costs of the argument.

IRISH REPORTS.

COURT OF COMMON PLEAS.

Loughnan *v.* Barry and Byrne.

June 3, 4, 24, 1872.—*Sale of Goods—Fraudulent misrepresentation—Payment by unproductive cheque—Rescision of contract—Trover—Money had and received.*

It is not necessary that a fraud by the vendee of chattels should be indictable, in order to entitle the vendor to rescind the contract of sale by reason thereof.

The drawing and giving of a cheque upon a bank, in payment, amounts to an implied representation that the drawer has authority to draw upon the bank, against assets *eo instanti* applicable towards payment.

The giving of an unproductive cheque in payment, on a sale of chattels for ready money, by a vendee, then knowing there are no assets in bank against which he has authority to draw, at the time of the cheque being taken by the vendor upon the faith that there are immediate funds applicable towards payment, amounts to a fraudulent misrepresentation by the vendee; and such misrepresentation will entitle the vendor to rescind the contract and resume the goods, notwithstanding that the vendee, upon reasonable grounds believes, at the time, that there would be funds in bank to pay the cheque when presented, and though he were not indictable for obtaining the goods by false pretences.

[C. P.—Ir. L. T. Rep. Dec. 21, 1872, p. 186.]

This was an action of trover, and for money had and received. The facts, as proved at a former trial, have been already reported, 5 Ir. L. T. R. 189. A new trial was had at the sittings after Michaelmas Term, 1871. Substantially the same facts then appeared, which, for the purposes of this report, are sufficiently set forth in the judgment (*infra* p. 64) of the Lord Chief Justice. At the close of the plaintiff's case, *Heron*, Q.C. (with him *Hemphill*, Q.C., and *Martin*), on behalf of the defendant, asked his lordship for a non-suit, or to leave to the jury the questions: 1. Did Neill intend to cheat? 2. Did he believe the cheque would be paid? Referring to the above report, and to *R.* v. *Walne*, 11 c. c. c. 647 there cited, they contended that the question of Neill's intention should be considered by the jury. That so, where the question is whether a