was proved to be a nuisance because it invaded the navigable waters of th. river, it does not follow that that disposes of the plaintiff's claim for an injunction and damages, as he might well invoke the maxim *Injuria non excusat injuriam.*

Per FERGUSON, J.—There is nothing either on the face of the conveyance to the plaintiff or in the surrounding circumstances at the time of its execution to indicate that the grantor intended, if intention could now be of any consequence, to reserve to himself the part of the lot under the water or any right or title to it; the contrary would rather appear from his being in possession at the time and having a boathouse situate as the present one is.

By the conveyance to the plaintiff he obtained title to the lands in the stream embraced in the two chains from the bank, but subject to the right of navigation expressed in the patent. What the plaintiff has done is no nuisance, nor is it shown that he has caused any injury to navigation, and he is entitled to redress for the grievances of which he complains. Even if the plaintiff is not the owner of the land under the water he is entitled to redress for the injuries he has sustained as a riparian proprietor merely.

Maclennan, Q.C., for the plaintiff.

McCarthy, Q.C., and *Gormully*, contra.

Proudfoot, J.] [February 26.

RE BRITON MEDICAL AND GENERAL LIFE ASSOCIATION.

Dominion Winding-up Acts—Insufficient evidence of insolvency—45 Vict. c. 23 (D.).

Held, that the evidence of insolvency was not sufficient to satisfy the requirements of the Dominion Winding Acts, and therefore order to wind up the company refused.

Moss, Q.C., and *Osler*, Q.C., for the petitioner.

J. Maclennan, Q.C., and *Francis*, for the company.

Boyd, C.] [March 31.

RE GILCHRIST AND ISLAND CONTRACT.

Short form mortgage — Inadmissable alteration —Personal power—Assignment of mortgage—Power of sale.

Where, in a mortgage purporting to be made under the Short Form of Mortgage Act, the power of sale was in the following words:—"The said mortgagee on default of payment for two months may, without giving any notice, enter on and lease or sell the said lands."

Held (1) that this was a power personal to the original mortgagee, and could be exercised only by him and not by an assignee of the mortgage.

(2) That inasmuch as this form of words did not correspond to the form of words in column 1, No. 14 of R. S. O. ch. 109, and was not either literally or in substance the statutory abbreviated form of words nor a mere extension from or qualification of the form of the statute, but an abolition of one of its most important terms, the benefit of the extended form of words in column 2 of the statute could not be claimed.

PRACTICE.

Boyd, C.] [January 12.

MACPHERSON V. TISDALE.

Attaching debts—Unascertained costs — Set-off—Payment into Court.

By the judgment in this action the defendant was found to owe the plaintiff $115, and he was ordered to pay the plaintiff's costs of action, less some interlocutory costs awarded to the defendant. Subsequent to judgment, certain creditors of the plaintiff issued garnishment process from a Division Court, attaching all debts due from defendant to plaintiff. After the taxation of the plaintiff's costs, but before the taxation of the defendant's interlocutory costs, the defendant paid $115 into the Division Court, having previously paid another sum of $115 to the sheriff to procure his release from arrest under a *capias* after judgment in this action.