

Chan. Div.]

NOTES OF CANADIAN CASES.

[Prac.]

they, or some of them, hold the land in question in trust for the Westlake Monthly Meeting of Friends as represented by them, the defendants, and to an injunction restraining the plaintiffs from disturbing them in the use of the property.

*Semble*, R. S. O. c. 216, s. 10, as to the appointment of trustees of lands, by religious bodies does not require the mode of appointment to be determined at one meeting, and the appointment itself made at another. They may both be done at the one meeting.

*J. Bethune*, Q.C., and *Clute*, for the plaintiffs.

*J. MacLennan*, Q.C., *Arnoldi & Alcorn* for the defendants.

Full Court.]

[February 21.]

## KITCHING V. HICKS.

*Chattel mortgage—Registration—Book debts—R. S. O. c. 119.*

Appeal by the plaintiff to the Divisional Court from the judgment of Proudfoot, J., noted *supra* vol. 19, p. 276 (see also *supra* vol. 19, p. 59.)

Judgment of Court delivered by Osler, J.

Judgment of Proudfoot, J., varied so far as the book debts were concerned, and the plaintiff held entitled to judgment as to them.

Apart from the existence of actual fraud, the instrument is only avoided by the non-registry in so far as the Act required its registration, if that part of it can be severed from the rest, as here it certainly could. The assignment or charge of book debts is separable from the assignment of the goods, and as to it, registry was not necessary.

*Taylor v. Whittemore*, 10 U. C. R. 440 cited and approved of.

The rule now is, that if the legal part of the contract in question can be severed from that which is illegal, the former shall stand good whether the illegality exist by statute or common law.

The operative part of the instrument in question was as follows:—

"The party of the first part doth assign unto the party of the second part all his right and claim to the goods and stock in trade in the store of the said party of the first part to an amount sufficient to reimburse the said party of the second part whatever he may pay in consequence of becoming such surety as aforesaid, and should there not be stock enough for that purpose in the store at such time, the balance after deducting the value of the said

stock, shall be made up of the book debts then on the books of the party of the first part."

*Held*, that the terms of this agreement were not sufficiently comprehensive to cover the substituted, renewed or added stock in trade. Without adding words to the description, it could not be said that the stock secondly mentioned in the agreement was anything else than what might remain of that which had already been specifically assigned.

*Akers*, for the defendants, *Clarkson*, *Huston & Co.*

Ferguson, J.]

[February 21.]

## KIDDER V. SMART.

*Patent—Re-issue—Infringement—Laches.*

Action for infringement of a patent.

*Held*, that the delay (without any excuse whatever) of a patentee for a period of nearly two years, after full notice and knowledge of an inadvertence or mistake in his original patent, and after professional advice on the subject, and after a re-issue of the same patent in the United States, founded upon the same alleged inadvertence or mistake (during which period manufacture has been carried on in the United States under a re-issue there), before the application for a re-issue in this country, is fatal to the validity of the re-issue in Canada.

It is not wrong to manufacture and sell an article in this country which has been patented in the United States, and put upon it a statement that it is so patented, as a recommendation of it, so long as there is no infringement of a valid existing patent in this country.

*B. B. Osler*, Q.C., and *Wardell*, for the plaintiffs.

*C. Moss*, Q.C., for the defendants.

## PRACTICE.

Masters' Office,  
Mr. Hodgins, Q.C.]

[Jan. 8.]

## RE MUNSIE.

*Administration order—Preliminary issue—Jurisdiction of Master—Setting aside will—Personal Representative—Executor's liability for chattels given for life and then to remainder-man.*

The jurisdiction in Chambers to grant administration orders applies only to simple cases of account, and the Judge or Master in