

[Chan.]

NOTES OF CASES.

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Master to take the accounts. In proceeding under the decree the defendant was hampered by the declaration in the decree, the Master holding that he was bound by it. On petition to amend the decree, so as to make it conform to the judgment,

Held, that, as it appeared that the judgment was directed solely to the fact that the bond was assigned as a security only, and that the view taken as to the credit was a ground for the holding as to such assignment, and was not a substantial part of the judgment, and the declaration in the decree as to the credit was, therefore, unauthorized.

Hoyles and Gwyn, for the petition.

Walter Cassels, contra.

DICKSON V. HUNTER.

Mortgagor and mortgagee—Fixtures.

The plaintiffs were registered mortgagees of a large tract of land. M., desiring to build a mill in a village where part of the land lay, took a deed of a small portion thereof from one of the owners of the equity of redemption, conditioned that he should erect a flouring mill thereon. M., without searching the title and without actual notice of the plaintiff's mortgage, erected the mill with the intention of establishing a business there. Before its completion and before the machinery was put in, he discovered the mortgage, but proceeded to put in a boiler, engine, mill stones and several machines necessary for carrying on milling. On the plaintiff's attempting to sell under their mortgage, the machinery was removed by M. An injunction was granted to stay the removal, and an issue was directed to try the title to the mill and machinery. A number of the machines were not attached to the building, being kept in place by their own weight; but they were necessary for the working of the mill, and suited for that purpose only, and the whole structure—building, engine house, boilers, engine and machinery—was put up with the express purpose of establishing a flouring mill on land that M. believed to be his own.

Held, that the mill and its contents passed to the mortgagees; and an order was made for restitution of the machinery which had been removed, and the injunction extended to pre-

vent its removal in future, with liberty to M. to pay its value to the plaintiffs, which they should accept, if offered, and release the machinery.

Moss, for the motion.

Walter Cassels, contra.

BEATY V. SAMUEL.

Trust for creditors—Secured creditor—Rights of—Creditors not scheduled under Insolvent Act 1875.

The plaintiff, the holder of a chattel mortgage with a covenant for payment, was not scheduled in proceedings in insolvency under the Act of 1875, but he was aware of the proceedings, and the insolvent obtained a final discharge.

Held, that the debt under the chattel mortgage was not extinguished.

A subsequent common law assignment for the benefit of creditors was made by the debtor of all his property to the defendant in trust to pay expenses &c., and "to apply the balance in or towards payment of the debt of the assignor in proportion to their respective amounts without preference or priority.

Held, that the plaintiff was entitled to sue for his whole debt and therefore to share in the estate proportionately under the deed for the whole, and that he was not bound to value his security and rank for the balance only.

Beaty, Q. C., for plaintiff.

Thomson, for defendant.

TAYLOR V. HALL.

Injunction—Unpaid costs of former motion—Amendment—Service of notice containing—Sufficiency of.

A motion by the plaintiff to continue an *ex parte* injunction was refused with costs, but at the same time leave was given to apply on the return of the motion to amend, and a new injunction was granted *ex parte*. On the return of the motion to continue the latter it was objected that the costs of the former motion had not been paid, which, however, had not been then taxed.

Held, that the non-payment before taxation was no objection to the motion proceeding.