

Sup. Ct.,]

NOTES OF CANADIAN CASES.

[Chan. Div.]

leave to sell the same, which was refused, on the ground that such leave could not be granted for the sale of a particular part of the estate, and if the whole estate was sold, and there should be a surplus, there was no mode of apportioning such surplus among the devisees. A decree was made in this suit and the lands sold, the said M. M. becoming the purchaser. She afterwards conveyed said lands to the commissioners of the lunatic asylum, and the title therein passed, by various acts of the legislature of Nova Scotia, to the present defendants; a statute having been passed in 1874 confirming the title to the said lands in the Commissioner of Public Works and Mines.

M. K., devisee under the will of A. M., brought an action of ejectment against the Commissioner of Public Works and Mines and the resident physician of the lunatic asylum, which was built on said lands, and in the course of the trial contended that the sale under the decree in the Chancery suit was void, inasmuch as the only way in which land of a deceased person can be sold in Nova Scotia is by petition to the Governor-in-Council. The validity of the mortgages and of the proceeding in the foreclosure suit were also attacked. The action was tried before a judge without a jury, and a verdict was found for the defendants, which verdict the Supreme Court of Nova Scotia refused to disturb. On appeal to the Supreme Court of Canada,

Held, affirming the judgment of the Court below, that even if the sale under the decree in the Chancery suit was invalid, the title to the land would be outstanding in the mortgagee or those claiming under her, and the plaintiff therefore, could not recover in an action of ejectment.

Semhle, that such sale was not invalid, but passed a good title; HENRY, J., *dubitante*.

Held, also, that the statute cap. 36, sec. 47 R. S., 4th series, vested the said land in the defendants if they had not a title to the same before. HENRY, J., *dubitante*.

Appeal dismissed with costs.

Wallace, for the appellants.

Maciennan, Q.C., and Graham, Q.C., for the respondents.

CHANCERY DIVISION.

Ferguson, J.]

[April 16.]

BUILDING AND LOAN ASSOCIATION V. PALMER ET AL.

Setting aside alleged fraudulent conveyance of personal property—Evidence of collusion or fraud—Judgment and execution creditors—48 Vict. c. 26, ss. 2 & 3.

In an action by a creditor for an amount due on a mortgage and to set aside a conveyance of personal property in which the judge who tried the case found that the transaction complained of was not made with intent to defeat the claims of creditors or to give a preference, and that no collusion or fraud was proved. It was

Held, that, as none of the creditors were judgment and execution creditors, in the absence of fraud, the plaintiffs could not set aside the transaction under the statute of Elizabeth, and

That although under 48 Vict. c. 26, s. 2 (O), it might possibly be that the transaction should be held to be void as against creditors as having the effect of defeating, delaying or prejudicing creditors, yet as the sale was not a sham or colourable one, but was a real transaction and *bona fide*, and a note was given as actual present consideration on which defendant, Ferguson, was liable, and which he afterwards paid, section 3 applied and protected defendants, and the plaintiffs failed on that branch of the case.

A. Cassels, for plaintiffs.

Guthrie, Q.C., for defendants, the Palmers.

Moss, Q.C., for defendant, Ferguson.

Boyd, C.]

[May 13.]

MURPHY V. KINGSTON AND PEMBROKE RY.

Railways and railway companies—Deviation—One mile limit.

Held, that under the proper construction of 42 Vict. ch. 9, sec. 8, sub-sec. 11, being the Consolidated Railway Act of 1879, the limits of deviation of a railway must not exceed one mile from the line of railway in case of lands,