

Chan. Div.] NOTES OF CASES—ARTICLES OF INTEREST—FLOTSAM AND JETSAM.

108, sect. 15, the title itself of the mortgagees is extinguished, and the right of action wholly disappears. Hence the result is not merely a bar of the claim, but a divesting of the title or a transfer of the whole right, title, estate and interest of the mortgagee to the mortgagor, or those claiming under him. *Dawkins v. Lord Penryhn*, L.R., 6 Ch., D. 318; L.R., 4 App. 51; *Heath. v. Pugh*, L.R., 6 Q.B.D. 345, followed.

Where, moreover, a mortgagee has suffered the title to run before he asserts his right of entry he cannot by getting possession of the property revive his title to it, but he is in as a mere trespasser. *Bryan v. Cowdal*, 21 W.R. 693; and *Sanders v. Sanders*, L.R. 19 Ch. D. 373, followed.

Nor does the insolvency of the mortgagor and the appointment of an assignee in insolvency suspend the running of the Statute of Limitations, so as to preserve the lien and security of the mortgagee on the land mortgaged, and enable him to claim the benefit of sect. 84 of the Insolvent Act, and insist on valuing his security as if the mortgage still subsisted on the land. *Henderson v. Kerr*, 22 Gr., 91 followed.

*MacLennan*, Q.C., for the plaintiff.

*Bethune*, Q.C., for the defendant.

Boyd, C.]

[May 10.

BRIGHT V. McMURRAY.

*Conveyance—Mortgage—Statute of limitations.*

Where mortgagees in fee in possession executed a deed purporting to "convey, assign, release, and quit claim" to the grantees "their heirs and assigns forever all and singular" the mortgaged lands, "to have and to hold the same as and for all the estate and interest" of the grantors "in and to the same."

*Held*, a sufficiently definite description to pass the fee to the grantees, inasmuch as the technical word "assign" was coupled with the proper words of limitation to heirs and assigns, and with the habendum to hold the land for all the "estate" of the mortgagees in possession. Hence the benefit of the possession held by the mortgagees, without any written acknowledgment of the title of the mortgagor, passed by the above deed to the grantees and coupled with their own subsequent possession for the necessary period conferred on them

an absolute title to the land by virtue of R. S. O. c. 108, sects. 15 and 19.

*Moss*, Q.C., (with him *J. E. Robertson*) for the plaintiff.

*H. J. Ferguson*, for the defendant.

Boyd, C.

[May 10.

MUNSIE V. LINDSAY,

*Will—Doctrine of election.*

Where, by a will, land is devised to an attesting witness, there is an intestacy as to this devise by virtue of 26 Geo. II., c. 6, sect 1, and, therefore, the doctrine of election does not apply, for since the beginning of this century it has been treated as settled law, that the doctrine of election is not applicable where real property is assumed to be devised by a will not executed so as to pass it, and by the same will a legacy is given to the heir.

*W. Cassels*, for plaintiff.

*Bethune*, Q.C., (with him *W. Barwick*), for defendant Lindsay.

*C. A. Brough*, for other defendants.

ARTICLES OF INTEREST IN COTEMPORARY JOURNALS.

Rights and liabilities arising through the promotion and formation of a corporation.—*American Law Review*, April, May.

Constructive total loss.—*Ib.*, May.

The rights of *bona fide* purchasers of under-due negotiable paper secured by mortgage.—*Southern Law Review*, April.

Chance verdicts.—*Central L. J.*

Re-issued patents.—*American Law Review*, April.

Unification of the law.—*Ib.*

Legality of cremation.—*London L. J.*, March 18.

Clubs and the outside world.—*Ib.*

Liability of solicitors for partners.—*Ib.*, April 8.

Charging the jury.—*Virginia L. J.*

Justices interested—Undue influence.—*Irish L. T.*, March 25. (From *Justice of the Peace*.)

Severability of insurance.—*Albany L. J.*, March 25.

FLOTSAM AND JETSAM.

STRANGE APPLICATION OF A STATUTE.—A quack doctor in Chicago, who was recently sued for malpractice in the treatment of a female patient, called to his assistance a limb of the law, who bore a similar relation to that profession that the doctor did to his. He astonished his opponent, the Court, and attorneys, by pleading the Statute of Frauds, by which, without a written contract, "no person shall be held to answer for the debt, default or miscarriage of another."—*American Law Magazine*.