

Ct. Ap.]

NOTES OF CANADIAN CASES.

[Q. B. Div.]

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE
LAW SOCIETY.

COURT OF APPEAL.

Q. B. D.]

[January 12.]

SCOTT V. BENEDICT.

Vendor's lien.

The judgment of the Court below, 5 Ont. R.
1; 20 C. L. J., 106, was affirmed.

The appellant in person.

W. Barwick, for the respondents, Benedicts.

The Chancellor.]

TRAVIS V. TRAVIS.

Donatio mortis causa—Gift inter vivos.

The judgment of the Court below, 8 Ont. R.
516; 21 C. L. J., 197, was affirmed.

McClive, for the appellant.

Muir, for the respondent.

Q. B. D.]

BLEAKLEY V. TOWN OF PRESCOTT.

*Municipal corporation—Badly constructed side-
walk—Ice on sidewalk.*

The judgment of the Court below, 7 Ont. R.
261; 22 C. L. J., 55, was reversed.

Watson, for the appellants.

Read, Q.C., and *Walter Read*, for the re-
spondent.

QUEEN'S BENCH.

KLOEPFER V. GARDINER.

*Assignment f. b. o. c.—Repudiation by creditor—
Rights.*

In an action by a creditor of an insolvent against the assignee under an assignment for the benefit of creditors to recover the amount of the dividend declared upon his claim, the defendant pleaded as a defence that the plaintiff, disputing the validity of said assignment, had as an execution creditor of the insolvent caused the goods assigned to be seized, and, on the trial of an interpleader issue directed, had endeavoured to impeach the said assignment; and that having thus repudiated the assignment he could not now claim the benefit of it.

Held (O'CONNOR, J., dissenting), a good defence, and that the plaintiffs were not entitled to recover.

It was contended for the plaintiffs that the said action not having been tried upon the merits, but that the Court having held that the plaintiffs being assenting parties to the assignment were estopped from afterwards impeaching it, formed no bar to the plaintiff's right to rank as a creditor upon the estate of the insolvent.

Per WILSON, C.J., that the mere bringing of the action was sufficient repudiation to dis-entitle the plaintiffs.

Per O'CONNOR, J., that by the judgment of the Court the plaintiffs were relegated back to their position and status under the assignment and therefore to the benefit of it.

Cressor, Q.C., in support of motion.

W. Nesbitt, contra.

GARDNER V. KLOEPFER.

Damages—Remote and speculative—New trial.

McR. & McR., being in insolvent circumstances, made an assignment for the benefit of their creditors to the plaintiff, the defendant K., and another. The defendant K. accepted the trust and acted on it. Afterwards, being desirous of disputing the validity of the assignment, he recovered judgment against the insolvents, issued execution thereon, and seized