

CHANCERY DIVISION.

Boyd, C.]

[Nov. 22.]

NORTHWOOD V. TOWNSHIP OF RALEIGH.

Drainage—Negligence—Municipality—Damages—36 Vict. c. 48, s. 373.

A municipality, in the prosecution of a scheme of drainage, widened and deepened a drain, whereby the waters brought down thereby into a natural stream flowing through the plaintiff's land, were in excess of the capacity of such stream, and in consequence, at seasons, the plaintiff's land was flooded.

Held, that the municipality was bound to provide a proper outlet for the increased volume of water brought down by the drain so enlarged.

Held also, that the flooding so caused amounted in effect to an expropriation of the land flooded, and it appearing that the benefit the plaintiff derived from the drainage system, as a whole, was in excess of the injury caused by the flooding, by an equitable application of the rule laid down by 36 Vict. c. 48, s. 373, (O.) the municipality was not liable for the damage caused by the flooding.

W. Douglas, for plaintiff.

MacLennan, Q.C., and *Pegley*, for defendants.

Boyd, C.]

[Dec. 23.]

CLARKSON V. WHITE.

Insolvency—43 Vict. c. 1 (D.)—Personal earnings of insolvent pending insolvency and before discharge—Assignee in insolvency—Costs.

An assignee in insolvency is entitled to all the earnings of an insolvent which are earned after the attachment or assignment in insolvency, and before his discharge, which are not necessary for the reasonable maintenance of the insolvent and his family.

Where an insolvent applied part of his earnings in the purchase of land for the benefit of his wife,

Held, that to the extent of earnings so applied the assignee was entitled to a lien on the land.

Held also, that the repeal of the Insolvent Act before claim made by the assignee to such lien, was no bar to the claim.

Where the original plaintiffs in an action were not entitled to any relief but by amendment, a party was added to whom relief was granted.

Held, the defendants were entitled to the costs of the action up to the close of the amendment.

Moss, Q.C., and *Gibbons*, for plaintiffs.

MacKelcan, Q.C., for defendant *White*.

Kingsford, for defendants, the Freehold Building Society.

Boyd, C.]

[Dec. 23.]

PARK V. ST. GEORGE.

Chattel mortgage—Consideration—Assignment for benefit of creditors—Creditor—R. S. O. c. 119, ss. 1, 2, 6.

Q. and *A.* being indebted to the defendant for \$1,600, executed a chattel mortgage covering all their stock in trade as a security for \$2,400, there being a contemporaneous verbal agreement that the defendant would make further advances to the mortgagors to the extent of \$800.

The mortgagors having subsequently made an assignment for the benefit of creditors, the assignee, on 3rd March, 1882, took possession of the mortgaged property. On 11th March, 1882, the defendant seized the property in the hands of the assignee, under his mortgage, and by arrangement between him and some of the creditors of the mortgagor, the goods were sold and the proceeds were held by the defendant's solicitor to abide the result of litigation as to the validity of the mortgage.

The plaintiff, a simple contract creditor of *Q.* and *A.*, whose debt existed at the date of the mortgage, claimed to have the mortgage declared void, and to have the proceeds paid to the assignee.

Held, the mortgage was void for not stating on its face the true consideration *Robinson v. Paterson*, 18 U. C. R. 55 followed.

Held also, that neither the making of the assignment for the benefit of creditors, nor the sale of the goods under the arrangement to hold the proceeds, intercepted the right of the plaintiff to impeach the mortgage, and that he was entitled to the relief claimed.

W. Cassels, for plaintiff.

J. Bethune, Q.C., for defendant.