

*Held*, that the transaction was invalid as against execution creditors, under s. 37 of that Act; and that the transaction was not within s. 41, subs. 4, which was intended to except only conditional sales of chattels, within R.S.O., c. 149. The last named Act was not applicable here where there had been, as between husband and wife, no delivery of possession without the ownership of the property being acquired, within s. 1 nor any writing evidencing the transaction.

*Held*, however, that the wife was entitled to be subrogated to the rights of the vendors of the piano to the extent of the payments made by her.

*Maybee*, Q.C., for plaintiff. *Idington*, Q.C., for defendant.

Street, J.]

CARSCALLEN v. WALLBRIDGE.

[July 10.

*Election by wife between benefits under separation deed and will of husband.*

A husband in a separation deed covenanted to pay his wife an annuity of \$200.00 as follows: \$100.00 on 1st June and December in every year and charged it on certain land; the wife accepting it in full satisfaction for support, maintenance and alimony during coverture and of all dower in his lands then or thereafter possessed.

The husband by his will, subsequently executed, directed his executors to pay his wife \$400.00 annually, \$200.00 on 1st June and December in each year during her life and added "which provision in favour of my said wife is made in lieu of dower."

*Held*, that the wife was not put to her election between the benefits under the deed and the will, but was entitled to both.

*M. Wright*, for plaintiff. *Northrup*, Q.C., for defendants.

## Province of Nova Scotia.

### COUNTY COURT.

[Johnston, Co. J., in Chambers.]

[July 12.

McMANUS v. TRACY.

*Collection Act, 1894—Order to assign—Tool of trade.*

This was an appeal from the order of a Commissioner which directed the defendant to assign in addition to all his other real and personal property one Gemunder violin. Defendant contended that s. 10 of "The Collection Act, 1894," having provided for the assignment of all the debtor's real and personal property in trust for the payment of the amount due, without further providing for the specifying of the particular things assigned, the Commissioner had exceeded his rights in ordering the defendant to assign said violin, and the order was therefore bad, and he further contended that said violin was a tool of trade (he having at the time of making of said order no other way of earning his living, but by playing