Ontario.]

MOLSONS BANK v. HALTER.

Preference—Defeating or delaying creditors—R.S.O. (1887) *c.* 124 *s.* 2—*Construction of Statute—Effect of words "or which has such effect"—Assignment by trustee to co-trustee—Pressure.*

W., a trader, was one of the executors of an estate and had used the estate funds in his private business. Having become insolvent, he gave a second mortgage on certain real estate to his co-executor as security for the money so appropriated. In a suit by a creditor to set aside the mortgage as void under R.S.O. (1887) c. 124, s. 2,

Held, affirming the judgment of the Court of Appeal for Ontario (16 Ont. App. R. 323), Patterson, J., dissenting, that the mortgage was not void under the said statute, the co-executor not being a creditor of W. within the meaning of the said section.

2. That the words "or which has such effect" in the section referred to, only apply to the clause immediately preceding, that is, to the case of giving one or more of the creditors of the transferor a preference over others, and do not apply to the case of defeating, delaying or prejudicing creditors.

3. That the preference mentioned in the statute as avoiding a conveyance must be a voluntary preference, and would not include a conveyance obtained by pressure on the transferor.

Held, per Strong, J., that W. by misappropriating the funds of the estate of which he was executor was guilty of a criminal offence, and the fear of penal consequence was sufficient pressure on him to take from the transaction the character of a voluntary conveyance.

Appeal dismissed with costs.

Bowlby, Q.C., for the appellants.

Aytoun-Finlay and *Duvernet* for the respondents.

COURT OF QUEEN'S BENCH — MONTREAL.*

Married woman separate as to property—Act of administration—Art. 177, *C.C.*

Held:—That the making of a reduction in the rate of interest payable on a hypothecary claim, is not a mere act connected with the administration of her property which a wife separate as to property may do alone without the authorization of her husband, but is in reality a donation, which is null and void unless the husband becomes a party, or gives his consent in writing. (Art. 177, C.C.) *Hart & Joseph*, Cross, Baby, Bossé, Doherty, JJ., Nov. 25, 1890.

Promissory note—Given as collateral security—Mutilation.

Held:—1. Where the appellant gave his promissory note to respondent as collateral security for a hypothecary debt due by his (appellant's) father, and on the same piece of paper wrote a letter stating that the note was so given as collateral, upon condition that respondent should delay proceedings on the mortgage until the note was due,—that the respondent was entitled to sue the appellant on the note when due, without putting the principal debtor *en demeure*; and the appellant, not having demanded that the principal debtor be discussed, or proved that the mortgage was paid, was rightly held liable for the amount of such note.

2. The severance of the note from the letter written above it, was not a mutilation that could affect the validity of the instrument.—*Palliser & Lindsay*, Tessier, Cross, Baby, Bossé, Doherty, JJ., June 19, 1890.

Donation inter vivos—Changing nature of deed of gift by subsequent deed—Giving in payment—Registration—Tender.

Held:—1. The parties to a deed of gift *inter vivos* may, by a later deed, change its nature from an apparently gratuitous donation, to a deed of giving in payment.

2. The forfeiture (under Art. 806, C. C.) resulting from neglect to register, applies only to gratuitous and remuneratory donations.

3. The giving of a thing in payment being equivalent to a sale of it (Art. 1592, C. C.), and the necessity of registering a deed of sale existing only as to third parties acquiring the thing and hypothecary creditors, absence of registration of the original deed could not be invoked by the testamentary executors of the person giving, against the deed

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