

C. P.]

NOTES OF CASES.

Chan.

[June 5.]

TURCOTTE ET AL. V. DAWSON.

Foreign judgment—Action on—Appearance—Effect of fraud.

In an action on a judgment recovered in the Province of Quebec—*Held*, that an appearance entered to the action in the Quebec Court must be deemed to be equivalent to personal service, so as to preclude the defendant from entering into the merits of the original cause of action.

The defendant pleaded herein that, after the entry of such appearance, the defendant gave to the plaintiff, and the plaintiff accepted a mortgage in satisfaction and discharge of the action and of all damages and costs in respect thereof, and that afterwards the plaintiff, without any notice to, or knowledge by, defendant, contrary to good faith and in fraud of defendant, proceeded with the action and recovered the judgment now sued upon against the defendant.

Held, that this was a good plea, and the evidence in support of it should have been received.

It appeared that from this judgment one of the defendants in Quebec had appealed, and that the appeal was still pending.

Quære.—Whether during the pendency of such appeal this action would lie.

A verdict having been entered for the plaintiffs, the Court granted a new trial.

McMichael, Q.C., and *S. G. Wood*, for the plaintiffs.

Ferguson, Q.C., and *J. R. Roaf*, for the defendant.

CANADA PERMANENT LOAN AND SAVINGS
Co. v. PAGE.

Mortgage—Proof of execution—R. S. O. ch. 111, sec. 56.

In ejectment, the plaintiffs, in proof of a mortgage under which plaintiffs claimed title, produced the registered duplicate original thereof with the registrar's certificate endorsed thereon—*Held* that, under R. S. O. ch. 111, sec. 56, this was prima facie evidence of the due execution of such mortgage.

Beverley Jones, for the plaintiffs.

Frank J. Joseph, for the defendant.

VACATION COURT.

[Junq 6.]

WRIGHT V. CREIGHTON.

Arbitration—Adding parties—R. S. O. ch. 49.

In ejectment the plaintiff claimed as assignee of one M. of a mortgage made to him by one C.; the defendant claimed under a deed from M. and by possession. He also set up a payment to M. of the mortgage of which he was the holder; and an offer to redeem on being notified of the amount due. At the trial the cause was, by consent, referred to an arbitrator; the order of reference providing, amongst other things, that the arbitrator should have all the powers of a judge *ad nisi prius* as to adding parties. After the reference had been entered upon it was discovered that, previous to the assignment of the mortgage to the plaintiff, it had been assigned to one R., who had assigned to E. W. and J. W., the latter being the husband of the plaintiff. On consents of E. W. and J. W. being filed to have their names added as co-plaintiffs, the arbitrator, after notice to the defendant, made an order adding them as such parties. On motion to set aside the order, but without it being made to appear that the defendant was in any way prejudiced or that any injustice was done him:

Held, by OSLER J., that under the order of reference and the Administration of Justice Act, 30 Vict. c. 8, R. S. O. c. 49, the arbitrator was authorized to make the order adding the parties.

Aylesworth for the plaintiff.

B. E. Bull for the defendant.

CHANCERY.

COLVER V. SWAYZE.

Proudfoot, V. C.] [June 14.]

Fraudulent conveyance—Parties—Demurrer

Although it would seem that, in this Province, every bill by a creditor against the assets of a deceased debtor, whether so expressed or not, should be taken to be on behalf of all the creditors, and that it is the duty of personal representatives, in every case where a deficiency of assets is apprehended, to ask for a general administration, and if they do not ask for it, it