

Div.]

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

the equity of redemption she could not found any claim to have the heir's estate operated with the payment of this mortgage in order to give her the full measure of her dower at law, and if she sought more than dower on the value of the estate after deducting the amount of the mortgage, she must contribute rateably to the payment of that encumbrance: that this was to be worked out in this way—getting one-third of the rents and profits for life she may keep down the one-third of the interest attributable to the mortgage debt for the like period. The yearly value of her dower was to be ascertained by deducting from one-third of the rents, issues and profits of the whole estate one-third of the yearly interest of the mortgage, and with that basis the value of an annuity to produce that sum during her life must be computed according to the methods usually employed in fixing a gross sum for dower.

Pousselle, Q.C., for the plaintiff.
Dumble, for the defendant.

Boyd, C.]

[May 5.]

BOYD V. GAFFIELD.

Fraudulent conveyance—Lapse of time—Statute of Limitations.

This was an action brought by a judgment creditor having unsatisfied writs in the hands of the sheriff, seeking to set aside a certain voluntary deed of conveyance made by the judgment debtor in September, 1873, of certain lands and premises, alleging that the said judgment debtor was then largely in debt, and that the plaintiffs' debt was then still unpaid. The defendants, the grantees under the voluntary conveyance, set up that, even if the plaintiffs ever had any right to resort to the said lands for the recovery of the debt, such right had been extinguished and lost by the delay.

Held, that inasmuch as the plaintiffs' debt was shewn to have existed prior to the deed of conveyance impeached, which conveyance was of an entirely voluntary character, the plaintiff was entitled to the relief claimed; for a deed which is by the statute of Elizabeth fraudulent as to creditors is not validated because it has not been attacked for ten or twenty years. It is a fraudulent deed, and it

remains so to the end of time, though it may be not effectively impeachable because of purchasers for value without notice having intervened, or because the claims of all creditors have been barred or extinguished by lapse of years, neither of which elements obtained in the present case.

Hayles and Riddell, for the plaintiffs.
W. Cassels, Q.C., and J. W. Kerr, for the defendant.

Boyd, C.]

[May 5.]

RE TRENT VALLEY CANAL.

RE WATER STREET AND THE ROAD TO THE WHARF.

Highway—Property in soil Expropriation—Compensation.

This matter reported *ante*, p. 183, having been amended by adding the Attorney-General of Ontario as a party, was re-argued, when it was *Held*, that the soil of the roads was vested in the Crown represented by the Attorney-General of Ontario, and to him as a public officer the compensation is payable. Even if there was jurisdiction, the discretion of the Attorney-General, or rather that of the Lieutenant-Governor in Council, as to the ultimate disposition of the fund, should not be interfered with. When the highway is no longer needed for public use the infallible justice of the Crown will regard the rights of all interested.

McCarthy, Q.C., and Barron, for Smith.
Irving, Q.C., for the Ontario Government.
G. T. Blackstock, for the corporation of Fenelon Falls.

Nelson, for the Dominion Government.
McMichael, Q.C., for a mortgagee.