

[Chan.]

NOTES OF CASES.

[Chan.]

land in respect of the charges created in her favor by the will or dower. The usual decree for payment or, in default, sale, was made with reference to the Master at Hamilton, under which the land was sold free from dower and other charges, and the purchase money was paid into court. In the Master's Office the widow made no claim, either for dower or in respect of the other charges; but she afterwards presented a petition to have it declared that she was entitled to dower in the land and to compensation in respect of the other bequests above set out; and prayed that a sum in gross out of the money in court should be paid to her in lieu of dower, and a proper sum allowed by way of compensation for the other benefits.

*Held*, following *Murphy v. Murphy*, 25 Grant 81, that the widow was not put to her election by the will, and that she was entitled to have a proper sum paid to her for dower out of the purchase money in court; but that by her acquiescing in the sale of the land, and by her laches she had waived her right to any compensation for the loss of the other benefits bequeathed to her.

*Black*, for petitioner.

*R. Martin*, Q. C., and *Watson*, for subsequent incumbrancers.

Spragge, C.]

[Feb. 17.]

NELLES (Assignee), v. BANK OF MONTREAL.

*Insolvent Act of 1875, sec. 134—Payment in contemplation of insolvency.*

*Held*, under the circumstances appearing in the case that certain transactions which took place between the defendants and K., an insolvent, shortly before the latter absconded, were not entered upon in contemplation of insolvency, but were attempts made in good faith to enable K. to carry on his business; and that the defendant's manager was not aware of the insolvent condition of K.

*Boyd*, Q. C., for plaintiff.

*Moss*, for defendant.

Blake V. C.]

[Feb. 26.]

HILL V. MANUFACTURERS' & MERCANTILE INS. CO.

*Mutual Insurance Company—Receiver—Assessment on premium notes.*

Where an application was made to the Court to add the persons who had signed premium notes as parties in the Master's office, and to direct the Master to assess the amounts due upon the notes, and to order payment of the same to the Receiver from time to time, it was shown that the directors had not made any assessments upon the notes pursuant to R. S. O. cap. 161, secs. 45 *et seq.*

*Held*, that as the liability attached only upon such assessment by the Directors, the Court could not add to, or alter the liability of the parties who had made the notes by referring it to the Master or a Receiver to do that which the Directors only could do, clause 75 of 36 Vict. cap. 44, which gave power to a Receiver to do this, having been omitted from the Statute on revision.

*Duff*, for plaintiff and Receiver.

*B. B. Osler*, Q. C., for defendant.

*Lazier* (of Hamilton), for some of the makers of premium notes proposed to be added.

Blake V. C.]

[Feb. 21]

SUMMERVILLE V. RAE.

*Preferential conveyance—Bona fides—Absolute deed security only.*

The defendant H. H. obtained from his co-defendant H. R., who was indebted to him, a deed of land in order to secure his debt, which conveyance was attacked by the plaintiff who had obtained an execution against H. R., after the delivery of the deed, on the ground that it was a fraudulent preference. It appeared in the evidence, however, that the grantee claimed to hold the land only as security for the amount due him:

*Held*, that the conveyance was *bona fide* and not to defraud creditors; that an account should be taken of the amount due H. H., and that the land should be sold, and the proceeds applied first in payment of the amount due to H. H. for principal, interest and costs, and the balance applied as in ordinary fraudulent con-