

Chan. Div.]

NOTES OF CANADIAN CASES.

[Prac.

PRITCHARD V. STANDARD.

Private international law—Administrator—Right to sue for moneys payable in foreign state.

To an action by the administrator in Ontario of W. M. deceased, on a policy on the life of W. M., which by the terms thereof was payable in Montreal, in the Province of Quebec, the defendants pleaded that the policy was issued from their office in Montreal; that by its terms the moneys were payable there; that the defendants had no office in Ontario for the payment of moneys by them, and that the plaintiff had not obtained letters of administration in Quebec, and had no right or title to sue for the moneys.

Held on demurrer a good defence.

CHANCERY DIVISION.

Divisional Court.]

[Dec. 18, 1884.]

CLARK V. HAMILTON PROVIDENT COMPANY.

Fraudulent preference—Insolvent circumstances—R.S.O. c. 118.

The H. Company and C. were creditors of S. S. gave the H. Company security on his lands for their claim which appeared to be good and sufficient to secure the amount due. Afterwards S. gave C. a chattel mortgage on his goods to secure C.'s claim. It did not appear that there was any fraudulent intent on S.'s part to prefer C. to the H. Company in giving the chattel mortgage. The H. Company now alleged that S. was in insolvent circumstances when he gave the chattel mortgage to C., and sought to have it declared void as a fraudulent preference under R.S.O. c. 118.

Held, that the H. Company was not entitled to the relief asked.

BOYD, C.—Though the effect of mortgaging the chattels to the plaintiff (C) may be to delay the defendants (the H. Company) in making their money out of goods, and defeat them as to these goods, it does not follow that the provisions of the Act as to preference have been infringed. So far as defeating and delaying a creditor is concerned, that is often the inevitable result of preferring a favoured creditor, a thing that could legally be done at Common Law and under the statute of 13

Eliz.; but the special provisions of R.S.O. c. 118, which differ it from, and extend it beyond the statute of Elizabeth, are those relating to preference. Now the title of the Act shews what is struck at. It is the fraudulent preference of creditors by persons in insolvent circumstances. The preference must be an act of fraud on the part of the debtor with intent to prefer one creditor to another out of his goods. Here the judge has not found fraud, nor do I think it is to be inferred from the position of the parties. A creditor holding ample security is not a creditor who requires protection within the scope of R.S.O. c. 118. The creditor who is thus secured on land (as in this case) has been provided for by compact between him and his debtor, and it would not seem unreasonable that as against the secured creditors the debtor should be allowed to secure another creditor out of his goods, for that is not done at the expense of the former, nor is the debtor as to the former to be deemed in insolvent circumstances.

Quære, as to how it would be if the security given the H. Company were shown to be inadequate.

Creasor, for plaintiffs (appellants).

Bell, for defendants (respondents).

Divisional Court.]

[Dec. 18, 1884.]

WATERS V. DONALLY.

Contract—Rescission—Under advantage—in-equality between the contracting parties.

It two persons, no matter whether a confidential relationship exists between them or not, stand in such a relation to each other that one can take an undue advantage of the other, whether by reason of distress or recklessness or wildness or want of care, and when the facts show that one party has taken undue advantage of the other by reason of such a condition of things, a transaction resting upon such unconscionable dealing will not be allowed to stand.

Held, therefore, in this case (affirming the decision of OSLER, J.A.) that it appearing that the plaintiff, being overmatched and overreached by the defendant, without information, and without advice, made a most improvident exchange of certain real and personal property of his own for certain real and personal