

[Prac.]

NOTES OF CANADIAN CASES.

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and a suit in the company's name; and an officer of the company could not, as against the company, be permitted to withhold what belonged to the company. In any event the defence set up was not the proper way to test the election of the directors, but should have been by motion to dismiss the action.

The effect of the statute discussed.

R. W. Scott, Q.C., for plaintiffs.

Chrysler, for defendant.

ROBERTSON V DALEY.

Statute of limitations—Possession—Squatter.

In 1809, P., the owner of certain land, sold it to D., who went into possession and occupied till 1827 or 1828, when he was turned out by one Dufait who was put in possession and remained in possession until 1861, when he conveyed to one D., through whom the defendant claimed. D.'s actual possession had only been of about ten acres.

Held, that D.'s possession after 1828 would relate to the whole land, and could not be treated on the principle of a squatter so as to confer a possessory title only to the ten acres actually occupied.

Small, for the plaintiff.

Scane (of Chatham), for the defendant.

PRACTICE.

Wilson, C. J.] [November 5, 1885.
Common Pleas Div.] [December 19, 1885.]

PAISLEY V. BRODDY.

Action on foreign judgment—Defence—Covenant—Foreclosure—Concealment—Nudum pactum—Fraud—Matters pleadable in original action.

The plaintiff sued upon a foreign judgment, which he had obtained against the defendant upon a covenant by the defendant to indemnify him against a mortgage made by the plaintiff to one G., who had foreclosed the mortgage and afterwards obtained judgment against the plaintiff on the covenant.

Held, that the effect of G. suing on the covenant in the mortgage after foreclosure

was to open the foreclosure, and an allegation that the plaintiff had improperly concealed the fact of the foreclosure from the foreign Court was no defence to this action.

Held, also, that an allegation that G. had agreed to take the land in full satisfaction of his debt showed no defence, but a mere verbal agreement without consideration.

Held, also, that an allegation that the plaintiff had sustained no damage by the judgment and execution against him, and that the writs of *fieri facias* against him were retained in the sheriff's hands under a fraudulent agreement between G. and the plaintiff, in order to sustain the proceedings against the defendant, shewed no fraud and was no answer to the action.

Per WILSON, C.J., the defendant was not at liberty to set up in answer to this action matters which could have been pleaded in the original cause.

Schoff, for the plaintiff.

Tilt, Q.C., and T. C. Milligan, for the defendant.

Boyd, C.]

[January 13, 1886.]

COTTINGHAM V. COTTINGHAM.

Fund in Court—Assignment—Notice to Accountant—Stop order—Judgment—Payment out.

The proper practice when money in Court has been assigned is to get an order to pay to the assignee only, or not to pay to the assignor without notice to the assignee.

Mere notice to the Accountant of an assignment of the fund is of no avail against a stop order afterwards obtained by another assignee under a prior assignment.

An assignee of a fund in Court has a right to apply for a stop order by virtue of his assignment, without any judgment in his favour.

The lodging of an assignment and power of attorney with the Accountant is sufficient under the practice to justify payment out in the absence of any other claim.

Watson, for the claimant Hudspeth.

Small, for the claimant Hargreaves.