

ESCHEAT.

responsibility is undertaken on account thereof." The jury having found negligence in not communicating the existence of a bill of sale, gave a verdict for the plaintiff; and upon a motion for a new trial, the Court held that notwithstanding the condition against responsibility, the defendants were liable for negligence in omitting to obtain the information from the best sources available. In *McLean v. Dun*, 39 U.C.R. 551; 1 App. R. 153, a similar question was raised, but the plaintiff failed on the ground that the representations made by defendants were not in writing, signed by them, as required by R. S. O., c. 117, s. 9, and, therefore, the defendants were not liable for any damages resulting from the falsity of the information furnished.

The rule to be drawn from these cases appears to be that in order to entitle a party to recover damages for misrepresentations of this kind, they must be in writing, and signed by the party to be charged; and that a stipulation against responsibility for the information furnished, will not protect the party furnishing it, from liability for damages occasioned by actual negligence on his part.

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SIMPSON V. CORBETT.

The recent case of *Simpson v. Corbett*, noted in our last number at p. 59, is another contribution to the law of Escheat. The circumstances of the case are curious. A person of the name of Charles Munroe died in the year 1869, entitled to real and personal estate, which he devised and bequeathed, subject to the payment of his debts, to his two illegitimate infant children, Duncan and Ellen, with a proviso that in the event of either dying, the share of the deceased should go to the survivor. The real estate at the testator's death was subject to a mortgage to one Williams. Mr. Corbett, the defendant in *Simpson v. Corbett*, was named the

sole executor and guardian of the infant devisees. Both Ellen and Duncan died without issue, Duncan having died last. After the death of Duncan, Mr. Corbett paid the amount due on the mortgage, and took a conveyance of the mortgaged lands from the mortgagee to himself in fee. Simpson then obtained from the Ontario Government a grant of the escheated estate, real and personal, of Duncan, and then as such grantee obtained letters of administration to Duncan's estate, and brought the action against Corbett for an account of his dealings as executor and trustee of the estate of Charles Munroe, and for a declaration that subject to the claims, if any, of Charles Munroe's estate, Corbett was a trustee for the estate of Duncan of the mortgaged estate and debt, and of all other gains and profits which had accrued to him by virtue of his executorship. The action was resisted on the ground that Corbett had acquired an absolute, irredeemable title to the mortgaged estate by virtue of the conveyance from Williams, and that the grant from the Ontario Government to the plaintiff was invalid according to the decision in the *Attorney-General v. Mercer*, 5 S.C.R. 538.

But Mr. Justice Ferguson, before whom the case was tried, granted the relief prayed on the ground that the plaintiff as administrator was entitled to an account, irrespective of the question whether his claim to the beneficial interest in the estate as grantee of the Provincial Government was good or bad, and that therefore the case was unaffected by *Attorney-General v. Mercer*.

The learned judge seems to have come to the conclusion, though we do not find this point expressly mentioned in his judgment, that the defendant Corbett, by paying off the mortgage debt, or as the defendant put it, buying the mortgaged lands at a price equal to the mortgage debt, and taking a conveyance of the mortgaged lands to himself, had effected a species of equitable conversion of the latter into personalty, and that it was as personalty in his hands, liable to be accounted