

C. P.]

NOTES OF CASES.

[C. P.]

The Chancellor.]

[Sept. 4th.]

CAMPBELL V. CHAPMAN.

Fraudulent Conveyance.

A man who had been carrying on business in partnership agreed to buy out the interest of his co-partner, for the purpose of continuing the business on his own account, and subsequently made a purchase of property and took the conveyances thereof in the name of his wife, the husband swearing that at that time he did not owe a dollar, and that the money expended in the purchase of the property belonged to his wife, having been obtained on the sale of lands belonging to her. This statement, however, was shown to be incorrect; and a judgment having been recovered against the husband, upon which nothing could be realized under execution, the Court, on a bill filed by the judgment creditor, following the decision in *Buckland v. Rose*, 7 Gr. 440, declared the transaction fraudulent as against creditors, and ordered a sale of the lands in the usual manner, and payment of the proceeds to creditors.

The Chancellor.]

[Sept. 4th.]

SMITH V. McLANDRESS.

Sale for taxes—Registration.

One H., being indebted to a bank, mortgaged his lands thereto as security for his indebtedness, and the bank subsequently foreclosed his interest, but still continued to allow H. to negotiate the sales of the lands and consulted him respecting sales effected by the bank. Some of the lands were specifically given as a security of a certain indorser, and the notes upon which his name appeared had all been retired. One of the lots so mortgaged was afterwards sold for taxes, but the purchaser omitted to register his deed for more than eighteen months after the sale: Meanwhile H., the mortgagor, sold and conveyed the land to a *bona fide* purchaser, without notice, which sale was subsequently ratified and confirmed by the bank, and the conveyances duly registered, before the purchaser at the tax sale registered his deed.

Held, that the purchaser at the tax sale had thus lost his priority; and a bill filed by him impeaching the sale by the mortgagor was dismissed with costs.

The Chancellor.]

[Sept. 4th.]

MUNRO V. SMART.

Married Women—Wills Act.

Quære, whether a married woman, under the *Revis. St. O.*, ch. 106, s. 6, can devise or bequeath her separate property to one of several children to the exclusion of the others.

The Chancellor, in disposing of a case in which this point was raised, remarked upon the words of the Act devise or bequeath "to or among her

child or children, issue of any marriage" that "the language is not very clear, it may be read to her child or among her children, or to her child or children or among her children. Either way it seems to be implied, where the word child is used, that it is an only child; it is not a child or children issue of any marriage, but to her child I do not think the point by any means clear.

Full Court.]

[Sept. 5th.]

ST. MICHAEL'S COLLEGE V. MERRICK.

Fraudulent Assignment—Pleading.

Held, affirming the judgment of Blake, V. C., that the plaintiffs were not at liberty to rely on a judgment at law recovered since the filing of the bill, for the purpose of setting aside an assignment of a claim as fraudulent, but must stand on their position as creditors when the proceedings were instituted in this court.

Held also, that the debt alleged in the bill being under a bond to Merrick's wife and not to Merrick himself, was not such a claim as could be garnished under the C. L. P. Act.

The CHANCELLOR, in disposing of the case, observed, "It is to be regretted that such a case of fraud as is disclosed in this bill, cannot, from the terms of the Common Law Procedure Act, as interpreted in the cases of *Gilbert v. Jarvis* and *Horsley v. Cox*, be reached in this Court. It may be that the case is incapable of being established in evidence, but as the law stands, were it established ever so clearly, the creditor is without remedy.

Full Court.]

[Sept. 5th.]

MEIGHEN V. BUELL.

Trustee—Solicitor—Costs.

On re-hearing the order as reported 24 Grant, 503, disallowing to a solicitor trustee costs other than costs out of pocket in suits to which he was a party was reversed [SPRAGGE, C., *dubitante*, who thought that that rule should be applied to all suits brought by solicitor trustees, and to all costs in those suits.]

U. S. REPORTS.

SUPREME COURT OF RHODE ISLAND.

WAKEFIELD V. NEWELL, Town Treasurer, &c.

Liability of Municipality for injury by surface water from streets.

No action lies against a municipal corporation for allowing the ordinary and natural flow of surface water to escape from a highway on to adjacent land. Nor will an action lie for the results of such usual changes of