

transfer of the property in the plant, he would have expressed such intent more explicitly. The book-keeper swore that the plaintiff had claimed credit in the books for the plant from the first; that in discussing the matter with W. a reason had been suggested for not immediately giving such credit that the plant was under mortgage.

*Held*, that upon a true construction of the articles of partnership as drawn, the plant was withdrawn from the operation of the law of Quebec as proved by its ownership being expressly provided for by the instrument; but that the evidence given by the parties other than W. was clear and satisfactory; that a mistake had been made in drawing the same, and that the articles should be reformed so as to entitle the plaintiff to credit for the plant in taking the accounts; and on this ground the judgment of the Court below was reversed.

*McCarthy*, Q.C., for the appellant.

*Bethune*, Q.C., for defendant in same interest.

*S. H. Blake*, Q.C., and *W. Cassels*, for the respondent.

#### IN RE HILL.

*Insolvent Act of 1875—Application for discharge—Non-disclosure of cause of insolvency—Defective books.*

The insolvent, nine months before his insolvency, stated to the contestant that he had a surplus of \$40,000. When he failed it appeared that there was a deficiency of nearly that amount, the difference not being satisfactorily accounted for. He did not produce all his books, but it was shown that they were kept in such a manner that the true state of his affairs could not have been ascertained therefrom. The cash book was never balanced, no balance sheet was made out, bills were discounted which did not appear in any of the books, and goods were transferred from one establishment to the other (the insolvent having a wholesale and retail place of business) without entry.

*Held* [reversing the order of the Judge below, granting a discharge to the insolvent], (i) that, though an insolvent is guilty of the offence of not fully, clearly and truly stating the cause of his insolvency, that is no ground for refusing the discharge, even after the conviction for the offence; (ii) the omission to keep any books prevents the Judge from granting a discharge,

whether the intent was fraudulent or not; but (iii) when they have been kept, it is not essential on the one hand that they should be kept in the most approved form, nor are they sufficient on the other hand, however carefully kept in some respects, if they fail to exhibit the insolvent's true position; (iv) that the evidence in the case disentitled the insolvent to his discharge.

Liberty to apply was given on the insolvent's producing the remainder of his books.

#### CHANCERY DIVISION.

BOYD, C.]

[Oct. 25.]

RE DEFOE.

*Trustee and cestui que trust—Statute of limitations—R. S. O., c. 108, s. 5, subs. 8.*

Petition under Quieting Titles Act.

Petitioner was let into possession of the land in question by his father, in 1870, in such circumstances as in law constituted him tenant at will to his father, and so continued till 1878, when his father died, leaving a will, by which this property was devised to trustees—"upon trust to demise and lease or otherwise manage and employ the land in such manner as they should deem best, and to pay the rents, issues, and profits to the petitioner for his life, and thereafter to sell the land and invest the proceeds for the benefit of the son's widow and children. This devise was made known to the son after the father's death, but he did not by word or act refuse to take the beneficial life estate devised to him. He continued in possession ostensibly as before, and now claimed that the Statute of Limitations had perfected his title to the lands as against the beneficiaries under the will.

*Held*, (reversing the decision of the Referee of Titles at Stratford) that after the testator's death, the statute ceased to run in favour of the petitioner's possessory claim, inasmuch as his possession thereafter was that of *cestui que trust* rightfully there by virtue of his equitable life estate under the will.

For (i) on the view of the facts most favourable to the petitioner, he neither accepted nor declined the life devise, but remained passive—and this being so, the presumption that he accepted must prevail, inasmuch as the devise for