

Upon a bill filed by the official assignee praying that the mortgages might be declared fraudulent and void as against him,

*Held*, that, under the circumstances, the first mortgage could not be held void as a preference, even if the mortgagor was insolvent when it was given. To render a transaction void as a preference, it must be the result of the pure voluntary act of the debtor.

*Molsons Bank v. Halter*, 18 S. C. R. 88, and *Stephens v. McArthur*, 19 S. C. R. 446, followed.

*Held*, also, that the assignment took priority over the first mortgage by virtue of its prior filing.

The first mortgage was a good consideration for the second. The first was given in pursuance of a demand from the mortgagee that he must have the money or security, and that demand must be taken as continuing to be made until payment. The second mortgage given in substitution for the first must be equally as good as the first. The second mortgage was not void on account of the agreement to postpone registration.

As soon as the fact of an assignment for creditors has been communicated to a creditor, who, though he may not execute it, does not repudiate it, a binding irrevocable trust is created which constitutes the trustee a purchaser for value. *Bertrand v. Parkes*. 175

#### GAMING.

*See* CONVICTION, 2, 3.

#### GARNISHMENT.

*Practice—Garnishing proceedings*

—*Affidavit—Residence of garnishee*

—*Procedure prescribed by statute.*]

—An affidavit, on which a garnishing order was obtained, stated that: "I have reason to believe that G., as the Clerk of the Executive Council of Manitoba, is indebted or liable to M., one of the above-named judgment debtors, in the sum of \$200"; but omitted to state that the garnishee "is within the jurisdiction of the Court."

*Held*, that the affidavit was defective, and that the order issued on it was a nullity.

Enactments prescribing procedure in the Courts are to be construed as imperative.

*McKay v. Nanton*, 7 M. R. 250, followed. *French v. Martin*. 362

*Interpleader—Priority between garnishing creditor and execution creditor—Sale of goods—When property passes.*

*See* EXECUTION.

#### HABEAS CORPUS.

*See* CONVICTION, 2, 3.

#### HALF-BREED LANDS.

*Half-Breed Lands Act—Infant's lands—Sale of—Order for sale—Complying with conditions of—Conveyance before order made—Purchase money—Payment into Court of—Condition precedent.*]—In an issue under the Real Property Act, the plaintiffs claimed title under a sale of a half-breed infant's lands alleged to have been made pursuant to an order of the Court. The order, purporting to be made in the matter of N. D., an infant, and dated 9th November, 1880, direct-