

[Prac.]

NOTES OF CANADIAN CASES.

[Prac.]

was given to the defendants after they were made.

In 1886, the defendants as executors as aforesaid sold the testator's estate, and realized the share of S. S., and paid it over to J. under the attaching order, and afterwards distributed the rest of the estate. The plaintiff now sued the defendants, claiming payment of the amount of S. S.'s share to him.

Held, that the attaching order was properly made, and the defendants were bound by it, and the payment made by them under it discharged them under Marg. rule 376, and the action must be dismissed with costs.

Leeming v. Woon, 7 A. R. 42 followed, in preference to *Webb v. Stenton*, 11 Q. B. D. 518.

Held, also, that the fact of J., the attaching creditor, being one of the executors and trustees in whose hands the share of S. S. was attached, did not invalidate the garnishee proceedings.

Held, lastly, that the defendants were not bound to interplead on receiving notice of the appointment of the receiver.

McKelcan, Q.C., and *Gorby*, for the plaintiff.
Moss, Q.C., and *Clement*, for the defendants.

Ferguson, J.]

[November 11.]

CORBY V. GRAY.

Vendor and purchaser—Sale subject to mortgage—Liability to indemnify—Parol evidence.

Although where one sells land, subject to an outstanding mortgage, there arises a presumption or supposed intention in equity on the part of the purchaser, to indemnify the vendor against the mortgage (if, that is, under the actual facts and circumstances, the parties are to be considered to have really occupied the relation of vendor and purchaser), yet this presumption may be rebutted by parol evidence; and it was held to have been so rebutted in this case, in which it appeared to be contrary to the real intention of the parties to the transaction in question, who, moreover, were not strictly in the relation of vendor and purchaser.

Parkes, for the plaintiff.

McCarthy, Q.C., for the defendant Gray.

Stanton, for the defendant Grinrod.

PRACTICE.

Boyd, C.]

[November 19.]

IN RE MONTRITH, MERCHANTS' BANK V. MONTEITH.

Costs—Solicitor appointed by Master—Charging clients with costs—G. O. Chy. 218.

During a reference in an administration suit the master appointed the solicitor for one of the unsecured creditors of the estate in question to represent the general body of unsecured creditors. The Imperial Bank were unsecured creditors of the estate; they sent in a claim to the administrator in answer to the statutory advertisement for creditors, but did not prove their claim before the Master. The nomination of the one solicitor for the unsecured creditors was an *ex parte* proceeding of which the bank were not satisfied till a year afterwards.

Held, that in the absence of contract or of an order of the master made under conditions contemplated by G. O. Chy. 218, the solicitor could not recover from the Imperial Bank any portion of the costs incurred on behalf of the unsecured creditors in contesting the claims of the secured creditors.

The doctrine of ratification by silence or inaction does not apply to a case like this.

Hall v. Lane, 1 Ha. 571, followed.

Hoyles, for the solicitor.

Kappele, for the Imperial Bank.

Mr. Dalton.]

[November 22.]

HANDS V. U. C. FURNITURE CO. ET AL.

Examination—Excluding solicitor and clerk from examiner's chambers—Exhibits.

Upon an examination before a special examiner at his chambers: (1) The examining counsel has no right to have a clerk present to assist him, if the opposite party objects. (2) If the documents are produced by the party under examination, the opposite party is entitled to have them marked as exhibits. (3) It is within the discretion of the examiner to exclude from his chambers even the solicitor for the party under examination, if his presence