

Prac.]

NOTES OF CANADIAN CASES.

[Prac.]

dishonoured, no proper notice of dishonour was given to T.M.

The Master ruled that the judgments were only *prima facie* evidence against the other creditors, and gave them leave to go into evidence as desired.

The banks appealed.

Held, the judgments were conclusive evidence as against the other creditors of the existence of the debt and the relation of debtor and creditor, though *semble* they would be only *prima facie* evidence against heirs and devisees.

S. H. Blake, Q.C., and Lefroy, for the appeal.
J. Reeve, contra.

PRACTICE.

Master in Chambers.] April 13, 1886.

LEVY V. DAVIES.

Interpleader—Sale of goods under order—Levy of money under execution—Creditors' Relief Act, 1880—Costs.

A sheriff had seized goods under writs of *fi. fa.* in his hands, when the goods were claimed by a chattel mortgage. An interpleader issue was directed, and an order was made for the sheriff to sell the goods and pay the proceeds into Court, which was done. After the claim of the chattel mortgagee had been barred a question arose as to the distribution of the money in court.

Held, that the seizure under the writs, together with the conversion into money by the sheriff under the order of the court, and the final barring of the claim of the chattel mortgagee, constituted a levying of the money under the writs by the sheriff in the sense of sec. 5 of the Creditors Relief Act, 1880, and therefore that the money in court should be distributed rateably according to the provisions of that Act; but

Held, also, upon a construction of s. 35 of the Act, that the execution creditors who contested the chattel mortgagee's claim in the interpleader were entitled to add their costs of the interpleader to their claims if they did not recover them from the claimant.

Kappelle, for the sheriff and one execution creditor.

Watson, Holman, Aylesworth, Clement, George Bell, John Greer and Wickham, for the other execution creditors.

P. McPhillips, for the claimant.

C. P. Div. Ct.]

[June 26, 1886.

Rose, J.]

[March 1, 1887.]

MACGREGOR V. McDONALD.

Discovery—Affidavit of documents—Evidence on motion for better affidavit—Inspection of documents—Rule 234.

The plaintiff sought to compel the defendant, F. McD., to file a better affidavit of documents, and relied upon the affidavit of documents of a co-defendant, D. M. McD., and also upon an affidavit of F. McD., filed upon an interlocutory motion in the action, as shewing that she had in her possession a power of attorney and statements of account which were not set out or in any way alluded to in her affidavit of documents, wherein she stated that the documents set out were the only ones in her possession relating to the action. In the affidavit in the interlocutory motion F. McD. admitted that she had received the power of attorney and statements of account in question from D. M. McD., but not that she had them at the time of making her affidavit of documents.

Held, reversing the order of WILSON, C.J., in Chambers, that the affidavit of D. M. McD. could not be received to contradict the affidavit of documents of F. McD., and that her admissions relied upon were not sufficiently explicit, for it was not to be inferred in the face of her affidavit of documents that at the time of making it she still had the documents which were at one time received by her; and,

Per ROSE, J., upon a subsequent motion, the court having refused to order a better affidavit of documents, an application under Rule 234, made upon the same material for inspection of the documents in question on the former application, could not succeed.

MacGregor, for the plaintiff.

S. H. Blake, Q.C., and Holman, for the defendant, F. McD.