

Oct. 1, 1882.]

[Chan. Div.]

NOTES OF CANADIAN CASES.

Chan. Div.]

railway embankment, were promised that a certain drain then already constructed, and running from their lands across the railway to the Bachus drain, should be cleared out and repaired so as to carry the waters on their lands into the Bachus drain, without which the latter would be no benefit to them. These ratepayers signed the petition for the Bachus drain, and submitted to the assessment on the faith of this promise, in fulfilment of which the defendants passed a resolution in Council that the said other drain should be cleared out and repaired up to the point of junction with the Bachus drain, and the money diverted as aforesaid, which was only a small amount, was expended in carrying out the said resolution.

Held, the resolution, however well and justly and honestly intended, offered no justification whatever for diverting the moneys or any part of it from the intended Bachus drain.

Held, further, this was not a case for arbitration, or at all events, not a case in which the plaintiff was bound to proceed by arbitration.

C. Moss, Q.C., for the plaintiff.

Pegler for the defendants.

Ferguson, J.]

[Sept. 15.]

WHITNEY v. TOBY.

R. S. O. c. 118—Undue preference—Pressure.

A., acting on his own behalf and as agent for the other creditors of L., a trader in insolvent circumstances, obtained a transfer of certain securities for money, and also of some leather, to himself, which transfer it was now sought to set aside on the ground of undue preference. About Dec. 9, 1880, the bank which had been in the habit of discounting customer's notes for L., refused to do so any more. Thereupon L. went to A. and wanted him to procure discounts for him and give him the full proceeds. A. said he would not do this, but that he would procure discounts provided L. would allow him to apply a portion upon the indebtedness represented by himself. This L. agreed to, and the securities in question were transferred to A. on these terms, he paying a certain amount for them. As to the leather, L. asked A. to purchase it from him. This A. refused to do, but he said he would take it and sell it for him, and apply the proceeds on the accounts represented by him, which L. agreed to. A. was aware at the time

of L.'s pecuniary embarrassment, and that he could not long continue business; he also knew the bank had refused any further discounts.

Held, nevertheless, after a review of the authorities, that inasmuch as it was A. who proposed to sell the leather, and apply the proceeds in the way in which they were applied; and inasmuch as the securities were brought to A. pursuant to a mode or scheme devised and proposed by him, and were dealt with according to that scheme; inasmuch as, that is, the idea of the preference originated with A., and L. did not seem to be the originator of any scheme or design to prefer A. or any of the other creditors for whom A. was acting, the transfers were not made "voluntarily," and "with a view of giving such creditors preference over other creditors," within the meaning of the statute, and could not be set aside; and although L. did that, the necessary and obvious effect of which was to prefer A. and those for whom A. was acting, yet the authorities forbade imputing, on these grounds, the *intent* to him, reasonable though it would appear to do so.

S. H. Blake, Q. C. (*Thompson* with him) for the plaintiff.

MacLennan, Q. C., for defendant Alexander.

McCarthy, Q. C., (*Foster* with him) for the other defendants.

Ferguson, J.]

[Sept. 15.]

WITHROW v. MALCOLM.

Patent Act, 1872, s. 19—Re-issue—Evidence—Imp. 14-15, Vict. c. 99.

A re-issued patent must be for the same invention as was the patent surrendered upon the re-issue taking place; the re-issue can include no new invention, that is, no invention not comprehended in the surrendered patent whose place it takes. The "claim" cannot be enlarged upon the re-issue of a patent if, by enlarging the claim or extending it, the invention is enlarged, if, that is, something new is imported into the re-issued patent, some invention not contained or comprehended in the surrendered one; but the "claim" may be enlarged on the re-issue provided the identity of the subject matter of the original patent is preserved.

Authorities elaborately reviewed and collated and on the principles therein laid down, *Held*, in the present case—which was brought