

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

father, W. H., he is to be disinherited of the whole or any portion of my estate, and the said estate so forfeited is to be then given to my son J. D., his heirs and assigns." Nothing was shown that W. H. had done anything to deprive himself of the right to the custody and control of his child.

Held, that the infant took a vested interest, and the direction to give the property to him on his attaining twenty-one, only had reference to vesting in possession; and the condition debarring him from living with his father was a condition subsequent, and was void. It was right in the eye of the law that the child should live with his father. He was, by law, compellable by the father so to do, and to live with the father, when the father so desired, was the duty of the infant so far as a duty can by law be cast upon an infant, and assuming this to be so the condition was void as against law.

W. P. R. Street, Q.C., for the plaintiffs.

W. Cassels, Q.C., for defendant Jas. Darvagh.

W. R. Meredith, Q.C., for infant defendant G. Hodgins.

T. G. Meredith, for defendant W. Hodgins.

Boyd, C.]

[Oct. 10.]

MALCOLM V. HUNTER.

Division of watercourse—Acquiescence—Statute of Limitations—Onus.

Action for damages and an injunction to restrain the defendant from diverting a creek running across his, the defendant's land, from the channel in which it was alleged to have flowed for more than twenty years; and the plaintiffs claimed an easement in respect of the said creek, which, previous to the diversion complained of, supplied water to the mill of the plaintiffs, situated on adjoining land. It appeared that the said channel was an artificial cut diverting the water in the creek from its natural outlet, and that this artificial cut was made at the instance and by permission of the then owner of the creek in 1860, in order to give a better supply of water to the mill of the plaintiffs, one of whom was his nephew, and in part to supply some drainage to his, the uncle's land. The plaintiffs admitted that this was the origin of the watercourse in dispute, and it appeared the subsequent user continued upon the same footing.

Held, the *onus* was on the plaintiffs to make out their right, and to show there was a change in the mode of user, after it had originated by the said permission, which they had not done, and the action must be dismissed with costs.

A. J. Wilkes, for the plaintiffs.

Fitch & Lees, for the defendant.

Boyd, C.]

[Oct. 10.]

LONG V. HANCOCK.

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

Interpleader issue. The Hamilton Knitting Company being indebted to the plaintiffs for a large overdue account, application was made by letter and verbally, on the part of the plaintiffs for payment or security. The letters stated that the plaintiffs did not care to wait longer for a settlement; that if the account was not closed at once it would be placed in an attorney's hands for collection; and that the plaintiffs must insist on a settlement. The verbal demands made by the plaintiffs were to the same effect.

In compliance the company, which was in insolvent circumstances, gave a chattel mortgage to the plaintiffs covering all their available assets; the mortgage recited that the plaintiffs had agreed to loan the company \$5,000 on the said security, but the arrangement was that the plaintiffs should deduct the amount of the debt due them out of the pretended loan.

Held, that the above was a fraudulent preference, and there was no pressure to exempt the case from the provisions of R. S. O. c. 118.

The doctrine of pressure is not to be extended, and it has gone already to a length which approximates to absurdity. The proper conclusion from the facts of this case was that there was no *bona fide* pressure which induced the giving of the security, but that it was a device of a moribund company to prefer the plaintiffs to the other creditors, as all parties very well knew and designed.

Ferguson, J.]

[October 19.]

DUNN V. THE BOARD OF EDUCATION OF THE TOWN OF WINDSOR.

Mandamus to admit child to public school—Public school regulations—Want of accommodation.

Application for a *mandamus* to compel the defendants to admit the daughter of the plaintiff