

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

loaned, an appeal from the Master's report, disallowing this item, was allowed.

MacLennan, Q.C., and Langton, for plaintiff.
Bethune, Q.C., and Whiting, for defendants.

Ferguson, J.]

Feb. 5.

LUMSDEN V. SCOTT.
Insolvent—Demurrer.

A creditor's assignee cannot sustain a suit to set aside a fraudulent conveyance or assignment made by the debtor, the assignor, prior to the assignment under which the creditors' assignee claims.

Demurrer to statement of claim.

Plaintiff sued under an assignment from one Moore, a debtor, to set aside as fraudulent and void a certain assignment of property, made by Moore to the defendant, prior to the assignment from Moore to the plaintiff. The assignment to the plaintiff was stated to be in trust for the benefit of the plaintiff and all other creditors of Moore. The statement of claim did not allege the plaintiff himself to be a creditor.

Demurrer allowed with costs.

Re Andrews, 2 App. R. 24, distinguished.
Sheppard, for the demurrer
B. B. Oster, Q.C., contra.

Ferguson, J.]

[Feb. 5.]

TIDEY V. CRAIB.
Chattel Mortgage—Fraudulent preference—
R. S. O. c. 119.

Action on behalf of creditors to set aside a certain chattel mortgage on the ground of fraud and fraudulent preference.

The defendant Craib, jun., and Jaffrey, executed a chattel mortgage to the plaintiff on May, 8, 1879, to secure certain moneys owing to him by them; but the plaintiff omitted duly to renew this mortgage. Prior to September 19, 1879, Jaffrey sold his interest in the property mortgaged to Craib, jun. On September 3, 1880, Craib, jun., executed a chattel mortgage on the same property to Craib, sen., (his father), and J. Craib, his brother, to secure certain moneys. Craib, sen., and J. Craib were aware at the time of the mortgage of September, 3, 1880, of Craib, junior's debt to the plaintiff.

Held, though they were thus aware of the existence of the debt to the plaintiff, and nevertheless took care of their own interest, this was not a good and sufficient reason for saying the

mortgage to them was not *bona fide*; and, the evidence otherwise shewing the mortgage to them to be *bona fide*, the plaintiff's unrenewed mortgage was void as against them, under the Chattel Mortgage Act, R. S. O. c. 119.

Held, also, there was no fraudulent preference, for the evidence showed that Craib, jun., did not make the mortgage of September, 3, 1880, voluntarily, but was coerced into making it by the mortgagees.

Held, also, though the affidavit of the debt required by R. S. O. c. 119, was made by J. Craib only, this was sufficient on authority of *McLeod v. Fortune*, 19 U. C. R. 100, and *Severn v. Clarke*, 30 C. P. 363.

The consideration for the mortgage of September 3, 1880, was not all an existing debt at the time of the execution thereof; as to part of it, P. Craib, sen., and J. Craib, was at that time only liable on promissory notes.

Held, nevertheless, following *Walker v. Niles*, 18 Gr. 210, and *Hamilton v. Harrison*, 46 U. C. R. 127, this did not invalidate the mortgage. Our R. S. O. c. 119, not requiring, as does the corresponding English Act, that the consideration for the mortgage should be truly expressed.

Bull, Q.C., and W. Cassels, for the plaintiff.
C. Moss, Q.C., and Nesbitt, for the defendants.

Ferguson, J.]

[Feb. 5.]

MCGREGOR V MCGREGOR.

Allowance for improvements and occupation rent—Mistake of title—Master's office.

This was an appeal from the report of the Master, made pursuant to the reference directed in this case, as reported 27 Gr. 470.

M. had gone into possession of certain lands in 1857 by the consent of the then owners. The lands were never, however, conveyed to him by valid conveyance, and the rights of the plaintiffs therein accrued on May 7th, 1873. The decree directed the Master to take an account of the rents and profits received by M. since May 7th, 1873, and to charge him with a proper occupation rent since that date, and also to take an account of the amount by which the lands in question had been enhanced in value by lasting improvements made thereon by M. under the belief that the said lands were his own.

The Master found M. entitled under this reference to an allowance for only a small portion of the improvements actually effected by him on