For wrongful proceedings under power of sale in a mortgage, illegal distress upon chattels, and consequent wrongs,

Held, that the plaintiffs were entitled to recover more than their mere money loss.

P. C. Macnee for the plaintiffs.

Crerar, Q.C., for the defendants.

BOYD, C.] [Oct. 11.

TREMEEAR *v.* LAWRENCE.

Solicitor's lien—Costs of actions to restrain sale of estate—Lien upon estate in hands of assignee—Absence of fund upon which lien could attach—Costs.

Two actions were brought by a trader to restrain proceedings under a chattel mortgage against the trader's stock of goods, and interlocutory injunctions were granted, but the actions were not carried further. The chattel mortgagee brought an action to recover the mortgage money and to restrain the mortgagor from selling the goods, whereupon the latter made an assignment for creditors, and, by arrangement in that action, the goods were sold by the assignee, and payment was made in full to the mortgagee for debt, interest, and costs of that action, after notice and without objection on the part of any of the creditors or of the solicitor who conducted the actions brought by the trader.

The solicitor claimed that by his exertions in these actions he had saved the goods from being sacrificed by summary sale, and brought this action to have it declared that he was entitled to a preferential lien upon the estate in the hands of the assignee for costs.

Held, that even if it were shewn that stopping the sale under the mortgage were a benefit to the estate, there was no jurisdiction without the direction of a statute to charge the property recovered or preserved, and without a money fund there was no subject for a lien.

Costs as of a successful demurrer only were allowed to the defendant.

Colin McDougall, Q.C., for the plaintiff.

Shepley, Q.C., for the defendant.

Chancery Division.

Full Court.] [Sept. 4.

MCCLURE *v.* BLACK.

Patent to land—Locatee receipt—Fraudulent locatee—Statute of Limitations—R.S.O., 1887, c. 24, s. 16.

The plaintiff, in 1855, obtained from the Commissioner of Crown Lands a receipt on sale of a certain lot of land. In 1868, one Beaton, in whose possession this receipt was, handed it back to the Crown Lands Office, and by means of fraud procured his own name to be substituted as purchaser in the books of the Department; and he and those claiming under him, including the defendant, had remained in possession of the lot ever since. In 1872, the plaintiff, having learned of the imposition, applied to the Department for redress. This application was pending and undisposed of by the Commissioner of Crown Lands till March 14th, 1889, when it was ordered that the patent should issue to the defendant; but three months were allowed to the plaintiff to take proceedings in Court to establish his title.

Held, that the plaintiff's right of action was not barred by any Statute of Limitations.

Per BOYD, C. The case might be likened to a matter litigated in the proper forum wherein no decision is given till after the lapse of years; in which case, pending judgment, the Statute of Limitations cannot operate to vest or divest rights, but must be deemed suspended.

W. Cassels, Q.C., for the defendant.

O'Connor, Q.C., for the plaintiff.

Full Court.] [Sept. 4.

SAWYER ET AL *v.* PRINGLE.

Vendor and purchaser—Property not passing till full payment—Resuming possession—Action for balance of purchase money after resale.

Sawyer & Co. sold to the defendant a traction engine and separator under a written agreement whereby it was provided that the defendant should give three promissory notes for the price; and that in default of payment of any of the notes the whole price should become payable; and that no property should pass to the defendant on the machine until the whole price was paid; and the vendors might resume possession on default, or for other good cause.

Default occurring, the vendors resumed possession, and resold the machine; and after crediting on the notes what the machine brought on the resale they now sued the defendant for the balance of the notes.

Held, per BOYD, C., that they had a right so to do; for the agreement gave a right of action