

Ct. of Appeal.]

NOTES OF CASES.

[Chancery.

MCDONALD V. GEORGIAN BAY LUMBER CO.

From Chancery.]

[Sept. 15.

Foreign bankruptcy—Assignment thereunder.

D., who was a naturalized British subject, possessed of a large quantity of lands in Canada, residing in the State of New York, was with his co-partners duly declared bankrupt by the Courts of that State on the 15th November, 1873, and on the 14th February following, a trustee of their estates was duly appointed, when the bankrupts executed a deed purporting to convey all their estate for the benefit of their creditors.

The Court (Burton, Patterson, Moss, J.J.A., and Blake, V.C.) *held*, reversing the judgment of the Court of Chancery, that the deed did not affect the bankrupt's lands in Canada, as there was no evidence that he intended them to pass when the deed was executed.

McCarthy, Q.C., for the appellant.

Crooks, Q.C., for the respondents.

Appeal allowed.

KAY V. WILSON ET AL.

From Chancery.]

Sept. 15.

Mortgage—Statute of Limitations—Wild lands.

In 1835, D. sold certain wild lands to S., and a mortgage was executed by the purchaser for the consideration money. In 1838, S. sold and conveyed his equity of redemption to K. In 1842, D. filed a bill of foreclosure against S., on which a final decree of foreclosure was obtained in 1845; but to this suit, K., through some oversight, was not made a party. K. died in 1876, and the plaintiff, his heir at law, filed a bill to redeem in June of that year. The defendants claimed under conveyance from D. made after the foreclosure.

It was proved that D. had gone upon the land, after his title had become absolute at law in 1838 or 1840 to ascertain if there were any trespassers upon it: that he had asked one Hardy to look after the land, and offered to sell it to him: that he had sold it to one Steers in 1847 as absolute owner, and that the taxes had been paid by the defendants and those through whom they claim.

Held, (Burton, Patterson, Moss, J.J.A., and Proudfoot, V.C.) that there was sufficient evidence of possession having been taken more than 20 years before the bill was filed, and that the plaintiff's right was barred.

Boyd, Q.C., for the appellants.

Armour, Q.C., for the respondents.

Appeal dismissed.

MOLSON'S BANK V. MACDONALD.

From Q.B.]

[Sept. 15.

Collateral mortgage—Right of action

The Bank held certain notes made by Mitchell Macdonald, the son of the defendant, who had indorsed them for his accommodation, and also certain other notes unsecured by any indorser. Upon being pressed for payment of a portion of the notes, Mitchell Macdonald gave a mortgage to secure the whole, which purported to be made in consideration of \$4,300, and was subject to a proviso to be void on payment of that sum with interest at 8 per cent., in one year from date, and then added, "the said sum being represented by certain promissory notes now under discount and held by the mortgagees, and any renewals or substitutions thereof that may hereafter be given for the same, all to be paid within one year."

Held, (Hagarty, C. J. C. P., and Burton Patterson and Moss, J. J. A.) affirming the judgment of the Queen's Bench, that the defendant was liable as the mortgage was merely collateral and did not suspend any right of action on the notes.

Dr. Spencer and *C. Moss* for the appellant.

C. Robinson, Q.C., for the respondent.

Appeal dismissed.

CHANCERY.

THE CORPORATION OF THE TOWNSHIP OF WALLACE V. THE GREAT WESTERN RAILWAY CO. AND THE WELLINGTON GREY & BRUCE RAILWAY CO.

Chancellor.]

[Sept. 12.

Agreement to erect and maintain station—Specific performance.

This was a suit to compel the defendants to maintain a regular way station at the village of Gowanstown, in pursuance of an agreement in that behalf entered into between the plaintiffs and the Wellington, Grey & Bruce Railway Co. on the 17th of May, 1872, whereby, as stated in the bill, in consideration of the sum of in debentures of the said municipality, the Wellington, Grey & Bruce Railway Co., "covenanted and agreed with the plaintiffs to erect, keep and maintain on the said extension a permanent freight and passage station at the said village of Gowanstown, such station to be built within a distance of six chains from the south-westerly angle of lot number 24, in the fifth concession of the plaintiffs municipality, provided no natural or engineering difficulties prevented its being placed within those limits, but if the chief engineer for the time being of the