

the debt, the liability for which has already been tried between the garnisher and the garnishee. Upon the whole, and after a good deal of consideration, due to the careful judgment of the learned Judge of the Division Court, I have come to the conclusion that the appeal must be allowed. It was contended by Mr. Shepley that section 9 in question was *ultra vires* the legislature. I am glad to find a way of disposing of the case without entering upon that question. I do not notice anything in the Creditors' Relief Act, which affects the general question argued and decided. But that Act does not apply to a Division Court execution or executions where there is no execution from the High Court in the sheriff's hands against the debtor. The garnisher must have judgment in the court below for his debt with costs, and also the usual costs of this appeal.

Early Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

COURT OF APPEAL.

From 1st Div. Ct., York.]

OSLER, J.A.]

[Oct. 18.]

WOOD *v.* JOSELIN.

Assignments and preferences—Garnishment of debt—Subsequent assignment of primary debt—Priorities—R.S.O. (1887), c. 124, s. 9.

An assignment for the benefit of creditors by a primary debtor, after a garnishing summons has been duly served upon him and the garnishee, and judgment has been obtained thereon, does not intercept or take precedence of the judgment, and the primary creditor may enforce payment by the garnishee.

Judgment of the First Division Court of York reversed.

G. F. Shepley, Q.C., for the appellant.

J. F. Woodworth for the respondent.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

STREET, J.]

[Sept. 6.]

MARTINSON *v.* PATTERSON.

Chattel mortgage—Defect—Taking possession—Rights as against subsequent mortgagee—

Full amount of mortgage money not advanced, effect of—Foreign contract as to chattels in Ontario.

A defect in a chattel mortgage is not cured, as against a subsequent mortgagee, by taking possession of the chattels, where the subsequent mortgage was made before such possession, although at the time of the seizure there was no default under the subsequent mortgage and the mortgagor was by the terms of it entitled to retain possession until default.

Where the full amount mentioned in a chattel mortgage is not actually advanced at the date at which it is given, it should nevertheless, in the absence of fraudulent intent or bad faith, stand as against a subsequent mortgagee as a security for the amount actually advanced at the time when the subsequent mortgagee's rights accrued. The rights of parties resident in a foreign country, and there making a contract in regard to goods in Ontario, are governed by the law of Ontario.

River Stave Co. v. Sill, 12 O.R., 557, followed.

Shepley, Q.C., for the plaintiff.

Masson, Q.C., for the defendant.

BOYD, C.]

[Oct. 18.]

KENT *v.* KENT.

Husband and wife—Conveyance of land to wife directly—Devise of land by wife—Tenancy by the courtesy—Adverse possession—Statute of Limitations—Infants—R.S.O., c. III, s. 43—Devise of land conveyed to married woman by strangers.

A conveyance of lands from a husband to his wife directly was made in 1870, was expressed to be in consideration of "respect and of one dollar," was in the usual statutory short form, and was duly registered. The marriage was in 1854.

Held, that the lands passed by the conveyance to the wife as her separate property.

The wife died in 1872, having made a will leaving her real estate to her two daughters, then aged respectively seventeen and twelve. The father remained in sole possession from the mother's death till his own death in 1890. This action was begun in 1890 by the younger daughter and the son of the elder to recover possession from the devisee of the husband.

Held, that the husband had no title by the courtesy, because he was excluded by the devise to the daughters of the lands conveyed by him