

Com. Pleas.]

NOTES OF CANADIAN CASES.

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COMMON PLEAS DIVISION.

RE MCINTYRE AND SCHOOL TRUSTEES OF
BLANCHARD.*Public schools—Dismissal of scholar—Action—
Mandamus.*

On 3rd December, 1884, a public school teacher dismissed the plaintiff, a boy of 13 years of age, for disobedience, speaking impudently when questioned about it, and refusing to be punished for misconduct. The matter was brought before the school trustees, and a meeting of the trustees held, and action taken in the matter; but a subsequent meeting was held, only two of the trustees being present, the third trustee not having been notified, when they decided that the son could return to school when he expressed regret to the teacher for his misconduct. The boy then returned to the school, but did not apologize. He remained there for several days without being interfered with, but the teacher did not give him any instruction. It did not appear that the teacher was acting under instructions from the trustees. In an action in the Division Court against the schoolmistress and trustees, the judge dismissed the action against the schoolmistress but held the trustees liable.

Held, on appeal to the Divisional Court, that the trustees were not liable.

Smith, for the appeal.

Shepley, for the defendant.

MASSIE V. TORONTO PRINTING COMPANY.

Libel—Excessive damages—New trial.

Action for libel. The libel consisted in letters published in the defendants' newspaper, reflecting on the plaintiff as warden of the Central Prison. The defendants refused to give the names of the writers of the letters, and so assumed the responsibility. The jury found for the plaintiff with \$8,000 damages. The Court, under the circumstances, directed the verdict to be reduced to \$1,000 with costs, if paid before the 1st April, and the plaintiff elected to take such amount, but if not then paid by defendants the order should be discharged. If plaintiff did not so elect, a new trial was directed with costs to be paid by defendants.

W. Nesbitt, for the plaintiff.

O'Donoghue, Q.C., for the defendants.

McROBERTS V. STEINHOB. B.

*Fraudulent conveyance—Intent—R. S. O. ch. 118 ;
47 Vict. ch. 10, sec. 3 (O.).*

When there is a bona fide debt, secured by a chattel mortgage given thereon, the mortgage cannot be avoided by simply showing that the debtor was insolvent, and intended to give the mortgagee a preference. To avoid the transaction under R. S. O. ch. 118, there must be a concurrence of intent on the part of the debtor and the creditor taking the mortgage; and the amendment made by 47 Vict. ch. 10, sec. 3, does not affect the matter.

Shepley, for the plaintiff.

W. H. Meredith, Q.C., for the defendants.

McCONKEY V. CORPORATION OF
BROCKVILLE.*Municipal corporation—Flooding of cellar—Private
drain connecting with street drain—Notice—
Liability.*

Action against the defendants for the flooding of the plaintiff's cellar by the stoppage of a drain, whereby the water and filth from the sewers of private houses and the surface from the street passing down the drain to be dammed back through plaintiff's drain upon his premises. The obstruction was caused by a private individual, S., who had a drain connecting with the street drain, which was not known to the defendants, but was known to the plaintiff; and though he complained to some members of the corporation of the water, etc., being backed up, did not inform of the nature of the obstruction. The drain was a covered drain running under the sidewalk for a considerable distance, the end of the drain being near plaintiff's premises, but not extending so far as them; and he connected his private drain therewith. There was no by-law requiring property owners to drain their premises into the drain, and their use of it was entirely voluntarily. There was no complaint as to the insufficiency of the drain or as to the manner of its construction.

Held, that the defendants were not liable.

Arnoldi, for the plaintiff.

Moss, Q.C., and *Reynolds*, for the defendants.