Master in Chambers.] SMITH *v.* MCDERMOTT. [April 9.

Judgment—Action for equitable execution—Right to attack judgment—Absence of fraud or collusion.

In an action brought by a judgment creditor against the judgment debtors and one L. for the recovery, by way of equitable execution of moneys claimed to belong to the judgment debtors, and to have been fraudulently transferred to L., an inquiry into the circumstances, under which the judgment was recovered, cannot, in the absence of fraud and collusion in the recovery thereof, be insisted upon.

A motion that a witness, who, on examination for discovery, had refused to answer questions relating to such circumstances should be compelled to attend and be examined at his own expense, was therefore refused.

Gwynne, for defendant Lee. *W. N. Ferguson*, for plaintiffs.

MacMahon, J.] BANK OF MONTREAL *v.* LINGHAM. [April 14.

Statute of Limitations—Simple contract debt—Conversion into specialty debt—Evidence of.

Default having been made in the payment of two promissory notes payable to a bank, a trust deed was entered into, to which the defendant, the maker of the notes, the defendant's father, an agent of the bank, as trustee, and the bank itself, were parties. The deed, after reciting the defendant's indebtedness to the bank, and also to his father, and that the father had certain lands as security therefor, the father thereby conveyed the same to the trustee as security in the first place for his indebtedness, then for that of the bank, power being given to the trustee to sell the said lands on one month's default in payment, and on notice in writing by the trustee of his intention to sell. The deed contained an acknowledgment by the defendant of his indebtedness, but there was no covenant by him to pay same. In 1893 written notice having been given by the trustee of his intention to sell, a deed of release, of all his interest in the said lands was given by the defendant to the bank, the deed reciting that it was made to save expense of a sale.

Held, that neither the trust deed, nor the deed of release, converted the debt into a specialty debt, so that the defendant could validly set up the statute of limitations as a bar to an action brought in 1902.

W. Cassels, K.C., and *A. W. Anglin*, for plaintiffs. *Ritchie*, K.C., and *Northrup*, K.C., for defendant.