

Dec. 1, 1883.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

of G. W. F. conveyed to E., under whom the defendants claimed. E. F. now brought this action to recover the land.

Held, [HAGARTY, C. J., dissenting,] that E. and those claiming under him, must be held to have had notice of the title of the trustees who were described in the patent as trustees of E. F., that E. F. was not estopped by the declaration executed by J. B. P. and herself, which did not divest her of her title, and that therefore she was entitled to recover.

Held also, that there should be a reference to the Master to take an account of taxes paid and permanent improvements made upon the lands, further considerations being reserved.

Per HAGARTY, C. J.—The legal estate being in the defendant by conveyance from the trustees, the plaintiff should show an equity to recover what she claims as part of the trust estate, which she has not done; that the patent to the trustees, though describing them as such, did not in terms declare any trust respecting the land, and it could not be assumed that they formed part of the trust premises.

Per ARMOUR, J.—The case was not within R. S. O. cap. 95, sec. 4, as to improvement under a mistake of title, but was governed by the principles of equity governing the relationship of trustee and *cestui que trust*.

Per CAMERON, J.—The case was within the statute.

CHANCERY DIVISION.

Boyd, C.]

[Nov. 21.]

ALLEN V. LYON.

*Copyright—Verbal assent to infringement—
Injunction—38 Vict. c. 88, D.*

Action for infringement of copyright in a book. The defendant pleaded assent on the plaintiff's part. At the trial a verbal assent was proved, and it was also proved that the plaintiff was aware of the defendant's intention to publish the parts complained of, in pursuance of such assent, and encouraged the defendant in so doing.

Held, that under these circumstances the plaintiff was not entitled to an injunction.

To create a perfect right under 38 Vict. c. 88, D., there should be an assignment in writing

of such parts of the book as the owner of the copyright therein is willing to permit his licensee to publish, but without any writing there may be such conduct on the part of the owner as disentitles him to relief in equity by way of injunction.

The plaintiff having proved some damage, though very trifling, ordered that defendant should get his costs, but only on the lower scale.

W. Cassels, Q.C., and Ferguson, for plaintiff.

Osler, Q.C., and Guthrie, Q.C., for defendant.

Proudfoot, J.]

[Nov. 21.]

MCINTYRE V. THOMPSON.

Mortgage—Parol agreement as to true consideration—Evidence.

Appeal from the report of the Master on Lindsay. A mortgage was given by T. to W., who assigned it to M. No money was actually advanced on the mortgage, but before the assignment to M. a parol agreement was come to between M. and T. that M. should hold the mortgage as security for a debt which T. owed to M. on a promissory note.

Held, that M. was entitled to hold the mortgage as security for the amount due him from T.

The rule that a mortgage for a specific sum may be shown to be for other purposes by parol evidence, is not confined to cases where the person having the legal estate is the original mortgagee whose claim has been paid off, and with whom the new agreement for security has been made. The same principle must apply whenever the legal estate becomes vested in the creditor by the agreement of the mortgagor, as was the case here.

H. Cassels, for the appellant.

Moss, Q.C., for the respondent.

Proudfoot, J.]

[Nov. 21.]

MCGARVEY V. THE CORPORATION OF THE TOWN OF STRATHROY.

*Injunction—Appeal—Stay of proceedings—
R. S. O. c. 38, ss. 26, 27.*

Motion for a writ of sequestration on the ground of non-compliance with an injunction.

Held, that where an injunction is ordered at the hearing of a cause, and the parties enjoined give the security required by R. S. O. c. 38, s.