

PASSING OF PROPERTY OBTAINED BY FRAUD—O'BRIEN'S DIVISION COURTS MANUAL.

The court thought that the fact that the flour, having been parted with by the plain tiffs with a view to its being sold had been pledged instead, made no difference, inasmuch as it having become revested in the pledgors by the act of the pledgees, the former were as competent to dispose of the goods by way of pledge as by way of sale; and, further, that it would make no difference if the money was advanced by the defendants before the flour was actually delivered.

The court stated also that there was another ground upon which they were of opinion that the defendant was entitled to judgment. That was, that where one of two innocent parties must suffer from the fraud of a third, the loss should fall on the one who enabled the third party to commit the fraud. Here the borrowers were allowed by the plaintiffs to appear as the ostensible owners of the flour, and to exercise uncontrolled dominion over it. It would therefore be unjust and inequitable that the defendants, who had innocently advanced money on the flour in the ordinary course of commercial dealing, should be sufferers through the improvident conduct of the plaintiffs with the borrowers, or their want of proper caution.

In the case of *Moyce v. Newington* the Lord Chief Justice stated that in the American courts the preference given to the right of the innocent purchaser when a contract fraudulently obtained has not been avoided by the original vendor, is treated as an exception to the general law, and as resting on the above principle that where one of two innocent parties must suffer from the fraud of a third the loss shall fall on him who enabled such third party to commit the fraud, and observed that he should rather prefer to accept that view than the reasoning on which the conclusion is based in our own text writers. *Babcock v. Lawson* cannot fail to be regarded as an important case as settling a point of law which at first sight does not clearly appear to be settled by previous decisions.—*Law Times*.

O'BRIEN'S DIVISION COURTS MANUAL :
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son : Toronto.

We have been favoured with advance sheets of this work. The well-known

ability of the author (who is editor of the LAW JOURNAL), and the acknowledged usefulness of his first edition, led us to expect much from this edition, for he entered upon an enlarged field. He has not disappointed us, but has occupied it well. The legislation which has taken place since Mr. O'Brien first annotated the Division Courts Acts, as set forth in the Consolidated Statutes of Upper Canada, chapter 19, and afterwards the Replevin Act, and subsequent Acts, giving jurisdiction to Division Courts, required a new effort, which Mr. O'Brien has put forth well. The amended Division Courts Act of the late Hon. John Sandfield Macdonald, giving the right to garnish debts, required an entire recast of rules and forms. These were framed and settled by the Board of County Judges in July, 1869. Then the revision of the Statutes brought the whole of the enactments into one Act. A second edition of Mr. O'Brien's work was thus a necessity, and the performance does the learned author infinite credit.

There is a careful annotation of almost every provision in the Statutes we have referred to; also of the Replevin Act. The Fence-Viewers' and Water-courses Acts, the Act respecting Education, and the Act respecting Public Schools, in so far as they confer jurisdiction on Division Courts, are also annotated; and there are added chapters on prohibition, certiorari, and mandamus. Supplementary rules and forms of the Judges, with annotations and useful hints to practitioners, are given to officers of the Courts and suitors. An appendix of new forms is added to those framed by the Judges, which will be found to supply a felt want in many respects.

The printing is in clear type, on fair good paper, and the work as a whole is a very creditable Canadian Law Book, reflecting well on the learning and care of the painstaking Editor and those who have assisted him, as well as on the publishers who have executed the mechanical department.

Mr. O'Brien's long acquaintance with these Courts, which his position as Editor of the "Canada Law Journal and Local Courts Gazette" has given him, has peculiarly fitted him for this work.
—*London Free Press*.