

erroneous.—*Henry Baker and Wife v. City of Portland; Henry Baker v. Same*, 7 C. L. J. N. S. 270.

INSOLVENCY.—1. A trader assigned all his property to the defendant as security for an existing debt, and money advanced to pay the debt of another creditor who had a valid mortgage upon the same property. The trader was afterwards adjudged bankrupt on his own petition. *Held*, that the assignment was valid, and not an act of bankruptcy.—*Lomax v. Buxton*, L. R. 6 C.P. 107.

2. R. assigned all his property to the plaintiff in consideration of a pre-existing debt, and under a threat of legal proceedings; R. did not then contemplate bankruptcy, but was hopelessly insolvent, and was afterwards adjudged bankrupt on his own petition. *Held*, that the assignment being made under pressure was valid; and that although an act of bankruptcy, yet there was no relation back to it, the adjudication being on R.'s own petition—*Jones v. Harber*, L. R. 6 Q. B. 77.

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CHANCERY.

BIEHN V. BIEHN.

Partition—Charge for improvement.

A father placed one of his sons in possession of certain wild land, and announced his intention of giving it to him by way of advancement. He died without carrying out this intention; meanwhile the son had taken possession, and by his improvements nearly doubled the value of the land.

Held, that the son was entitled to a charge for his improvements, and to have the land allotted to him in the division of his father's estate, provided the present value of the land in its unimproved state would not exceed his share of the estate.

In such a case, *Quere*, whether the son is not entitled to an absolute decree for the land.

[18 Grant, 497.]

Examination of witnesses, and hearing at the Spring sittings, 1871, at Guelph.

Mr. Miller for the plaintiff.

Mr. Fitzgerald, Mr. Bowlby, and Mr. Kingston, for defendants.

STRONG, V. C.—This is a suit for the partition of the lands of Moses Biehn, who died intestate. The only point which arises for decision is one respecting the interest of Moses D. Biehn, one of the co-heirs, in certain lands in the township of Wallace, the legal title to which was in the intestate at the time of his death. It is not disputed by those of the co-heirs who are adult, and it has been satisfactorily proved against the infant defendants, that the intestate Moses placed his son in possession of this property, which was then wild land, in 1864, and announced his intention of giving it to him by way of advancement, and that since that time the son had lived

upon the land and made very valuable improvements upon it, worth nearly double the price of the land in its unimproved state. It is further proved that the father was ready to convey the land to the son, but died before his intention was carried out. Under this state of facts I thought that Moses D. Biehn was entitled in equity, either to the land itself or at least to a lien for his expenditure in improving it, but I reserved judgment for the purpose of looking into the authorities, none having been cited on the argument.

Whilst I have had much doubt as to whether Moses D. Biehn is not entitled to a decree declaring him absolutely entitled to the land, I think it clear that he is entitled to the lesser relief of a charge for his improvements, upon the authority of *The Unity Joint Stock Bank v. King*, 25 Beav. 72, the circumstances of that case being less strong than those of the present, inasmuch as there was there wanting any proof of an intention, on the part of the father, to confer the ownership of the land upon his sons.

I think I am further justified in deciding that in making partition, the two half lots in Wallace being the land of which Moses D. Biehn was put in possession by his father, should be allotted to him, provided the present value of the land in its unimproved state does not exceed the value of the share of the lands to be divided to which Moses D. Biehn is entitled. The decree will contain declarations accordingly.

The same point came subsequently before the court in the suit of *Hovey v. Ferguson*, when the following judgment was delivered by

MOWAT, V. C.—As respects the lot claimed by James Hovey, the decree will be the same as in *Biehn v. Biehn*, lately decided by my brother Strong. I am not sure that the authorities would not justify a decree in such cases for the land itself, if a decree in the shape which the Vice-Chancellor directed should not happen to do full justice to the son. The point was not argued there; at least, no authorities were cited. But if a son is entitled to the land itself, irrespective of the condition of the father's estate at the time of his death, I think that, in case of an intestacy, it would be most reasonable that the value of the land without the son's improvements should be deducted from his share of the estate; and I hope that it will be found that the court has power to imply a condition of that kind in the verbal transaction between the father and the son, or that the court may impose on the son that equity. For the present, I follow the view which my brother Strong acted upon, especially as I gather from James Hovey's answer that such a decree will be sufficient to secure to him his farm.

The plaintiffs, who are the widow and some of the heirs of intestate, claim that this lot should be partitioned with the other real estate of the intestate. James, in his answer, set up his claim to the lot; and counsel for one of the other defendants, who is in the same interest with the plaintiffs, contended that the question could not now be decided. The other defendants in the same interest, as well as the plaintiffs, resisted the contention; and I am clear that it is competent for the court to decide the question without a suit by James Hovey, or a