

made out. (2) That the mortgages are not within secs. 4, 5, and 6 of R. S. C. ch. 127, but are framed in the manner authorized by the Building Societies Act. (3) That the Legislature of Ontario had power under sec. 14 of the B. N. A. Act to enact sec. 110 of the Judicature Act, which permits the striking out, in certain cases, of a notice for jury.

Appeal dismissed with costs.

FEBRUARY 9TH, 1903.

DIVISIONAL COURT.

REX v. HAYES.

Criminal Law—Conviction for Importing Alien Labourers into Province — Scienter — Necessity for — Conviction Bad on its Face—Amendment—Evidence as to Alienage—Person Born abroad—British Parents.

Rule nisi to quash conviction of defendant by the police magistrate for the city of Toronto for that the defendant did, at the city of Toronto and at other places, unlawfully prepay the transportation and assist and encourage the importation and immigration of Frederick DeRocher, an alien and foreigner, from the United States of America into Canada, under contract, made previous to the importation, to perform labour and service in Canada, viz., to act as a workman at the factory of the Toronto Carpet Manufacturing Company, Limited, in the city of Toronto, in the employ of the company, contrary to the statute. A fine of \$50 and costs was imposed.

G. H. Watson, K.C., for defendant, moved the rule absolute.

J. G. O'Donoghue, for prosecutor, shewed cause.

The judgment of the Court (STREET, J., BRITTON, J.) was delivered by

STREET, J.—The offence of importing aliens under a contract to do work in this Province is a new offence created by 60 & 61 Vict. ch. 11 (D.), as amended by 1 Edw. VII. ch. 13, and it is an essential element in the offence that it shall be done "knowingly," so that, unless done knowingly, it is no offence at all. The information does not charge defendant with having knowingly done the acts charged, nor is he convicted of having knowingly done them; and the conviction on its face is bad: *Carpenter v. Mason*, 12 A. & E. 629; *Regina v. Justices of Radnor*, 9 Dowl. P. C. 90. The omission from the information and conviction of one