

s. 43, s-s. (K), R.S.M., c. 53, being his actual residence or home. The evidence was that in September, 1897, defendant gave up his position as Indian Agent at Berens River, and rented the building in question, in which he had been living and which he had erected on crown land, to his successor in office. He then built a temporary log house on an island about 1½ miles away in which he lived with his family and where he maintained himself by fishing. He afterwards tried to sell the building in question to the Dominion Government. He swore that his absence was only temporary and that if he could not get the Government to purchase he intended to return and occupy this building as his home.

*Held*, reversing the decision of the County Court Judge, DUBUC, J., dissenting, that the building had ceased to be the actual residence or home of the defendant and was therefore not exempt from seizure.

*Elliott*, for plaintiff. *Ewart*, Q.C., and *O'Reilly*, for defendant.

Full Court.]

BANK OF HAMILTON v. GILLIES.

[June 13.

*Promissory note—Bills of Exchange Act, 1890, s. 82, s-s. 3—Additional provisions in note—Lien—Note.*

The instruments sued on in these cases contained the usual provisions of a promissory note with additional provisions to the effect that the title, ownership and property for which they were given should not pass from the payees until payment in full, that if the notes were not paid at maturity the vendors might take possession of the machinery for which they were given and sell the same at public or private sale, the proceeds, less the expenses, to be applied on the notes, and that such action should be without prejudice to the right of the vendors to forthwith collect the balance remaining unpaid.

*Held*, that the instruments could not be regarded as negotiable promissory notes because, (1) the added provisions qualified the absolute and unconditional promises to pay, as the vendors might not be in a position to give title to the property at maturity which the makers would be entitled to: *Dominion Bank v. Wiggins*, 21 A.R. 275; *Préscott v. Garland*, 33 C.L.J. 546; and (2) the added provisions were matters entirely unwarranted by s-s. 3 of s. 82 of the Bills of Exchange Act, 1890, as they could in no sense be treated as merely a pledge of collateral security with authority to sell or dispose thereof; and, following *Kirkwood v. Smith*, (1896) 1 Q.B. 582, the statute having set out certain additions that might be made to the simple promise to pay, impliedly excluded others. *Merchants' Bank v. Dunlop*, 9 M.R. 623, not followed.

*Ewart*, Q.C., and *Crawford*, for plaintiffs. *Howell*, Q.C., and *Mathers*, for defendants.