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MASTER'S OFFICE.

WILEY V. LEDYARD.

Mortgage — Taking account in M.O. — Collateral security—Statute of Limitations—Arrears of interest—Pleadings.

On a reference to take accounts in a mortgage case, it is not open to the defendants to contend that the original loan was *ultra vires*, nor can any defence be raised in the Master's Office, which, if allowed, might result in determining that the Court had made a nugatory order of reference.

When certain securities had been assigned as collateral for the payment of a promissory note of $1,000, which note was partly paid and a new note given, such securities may be held until *the debt* is discharged by payment.

Though the remedy of a creditor to recover a debt be barred by the Statute of Limitations, he may hold the collateral securities for such debt until paid.

When no claim for arrears of interest is specially made by the pleadings, and where there is no covenant to pay interest, only six years arrears of interest can be recovered.

Only such claims for debt as are set out in the pleadings can be recovered in the Master's Office under an order of reference to take accounts.

[Toronto, Dec. 10, 1883.

The facts of the case and the arguments appear in the judgment of the Master in Ordinary.

J. R. Roaf, for plaintiff.

W. A. Foster, and *G. H. Watson*, for defendants.

MR. HODGINS, Q.C.—The plaintiff claims as assignee of a mortgage in respect of certain loans originally made to the defendant Ledyard by the Rent Guarantee Loan Aid and Investment Company. These loans were held to be *ultra vires* of the Company in a suit for the winding up of its affairs: *Walmsley and Rent Guarantee Co.*, 29 Gr. 484.

Mr. Foster, for the defendants, contended that it was open to him to show that the loan, being beyond the powers of the company to make, could not be assigned or recovered in this action; but I ruled against his contention on the ground that the subordinate Court of the Master was not the forum before which such an issue could be decided; for if it entertained and adjudicated in favour of his contention it would be in effect determining that one of the Divisional Courts—to which the tribunal of the Master is subordinate—had made a nugatory order of reference. This view is sustained by the judgment of the Supreme Court in *Bickford* v. *Grand Junction Railway Company*, 1 S. C. R. 696. Mr. Justice Strong, who delivered the judgment of the Court, says on page 726: "The general practice of the Court of Chancery of Ontario, according in this respect with the practice which prevailed in England before the abolition of the office of Master, is that a question such as this, the invalidity of a mortgage deed, should be raised by the pleadings, and adjudicated by the Court on the hearing of the cause. We can find no exception to this cardinal rule of equity procedure, save in some few respects where the general orders of the Court of Chancery have authorized the Master to deal with matters of account which formerly required special directions in the decree, and which have no relation to this case. If the doctrine of the Court of Appeal (23 Gr. 340) were to prevail, it is hard to suppose any case in which the Master, under a reference to take the account in a mortgage suit, might not assume the jurisdiction to decide upon the validity of the mortgage deed. If the mortgagors are to be at liberty to say in the Master's Office that there is nothing due on this mortgage deed, because it was beyond the powers of the respondents as a corporation to make it, why should they not also be heard to say there is nothing due because the deed was obtained by fraud? Unless some arbitrary line is to be drawn, the right of the Master, under such a reference, to enquire into the validity of the deed would, according to the doctrine of the Court below, be co-extensive with that of the Court at the hearing. We know of no authority for any such delegation of the functions of the Court to the Master."

The plaintiff claims to be allowed a loan of $975, being a part renewal of a loan of $1,000 secured on the lands in question, and other lands mentioned in a receipt dated the 29th of January, 1875, and which concludes thus, "All of which securities are deposited as collateral security for the payment of a promissory note dated this day, made by the said T. D. Ledyard, payable three months after date to the order of T. D. Ledyard, at the Royal Canadian Bank, in Toronto, for the sum of one thousand dollars; and if said note is not paid at maturity it shall bear interest at the rate of two per cent. per month until paid."