

BAIN, J.]

[Dec. 8, 1893.]

MCKAY v. GRANT.

Interpleader issue—Mortgagor and mortgagee—Attornment clause in mortgage—Of none effect unless there is a bona fide demise.

Baker, for execution creditors, moved to bar the claimants.

Vivian for claimants.

Machray for sheriff.

Held, "It is well established law that it is competent for the parties to a mortgage to agree that as regards the mortgaged premises they shall stand to one another as landlord and tenant, and that such an agreement will prevail against third persons, provided that it has been made *bona fide* and honestly; but such an agreement cannot be held to have been made *bona fide* unless, as Mr. Justice Strong said in *Hobbs v. The Ontario Loan and Debenture Co.*, 18 S.C.R. 483, it appears that it was really the intention of the parties to create a tenancy at the rental which is reserved, and not merely under colour and pretence of a lease to give the mortgagor additional security not incidental to his character as mortgagee." *Vide also Ex parte Voisey*, 21 Ch.D. 442; *dictum* of Cotton, L.J., there expressed, approved of.

In the present case it was clear beyond question that there was no intention of creating an actual tenancy at an actual rent; and as it did not seem possible that any further evidence could change the effect of the claimants' own statements, and as it was not suggested that there was any further evidence to give, the plaintiff John Grant should be barred with costs.

NEW RULES OF COURT.

The following new Rules were passed by the Supreme Court of Judicature for Ontario for 29th December, 1893:

Ordered that Rules 210, 211, 212, be hereby repealed, and the following substituted therefor:

210.—A judge shall be at Osgoode Hall every week, except vacation, for the purpose of disposing of all business, except trials, which may be transacted by a single judge. All applications during the week are to be made to the judge assigned to take the weekly work.

211.—The business of the weekly sittings shall be as follows:

Monday and Friday—Chambers business—Motions first, appeals afterwards.

Tuesday, Wednesday, and Thursday—Court business.

212.—All business, except *ex parte* motions, is to be entered on a list for each court day, and to be disposed of in the order of entry, unless otherwise directed by the judge.

212 (a).—Lists shall be prepared by the proper officers of all court business for each day, in which the cases and matters shall be entered in the order in which the *principles* are filed with the officer.

212 (b).—The above rules shall come into operation on and after the 8th January, 1894, and prior publication in the *Ontario Gazette* is hereby dispensed with.

A list of non-jury cases to be tried at Toronto shall be prepared by the proper officer,