

of buying hops from time to time, and giving the bank his own warehouse receipts or direct pledges for the purpose of raising money to pay for them. Then at the request of the bank he constituted his bookkeeper, Hiscox, his warehouseman, and Hiscox issued warehouse receipts to the bank in substitution for the securities or receipts theretofore held by the bank, there being no further advance made when the new securities were given. By sub-sec. 2 of s. 75 of the Bank Act, the bank, on receipt of the goods, may store them and take a warehouse receipt for them without forfeiting any existing right.

Held, that this exchange of securities should be treated as authorized under that sub section.

The remaining question related to the rights of the bank under a mortgage upon a block of brick buildings made by Smith to one Steele, and assigned to the bank. The plaintiff asked for a declaration that the advances by the bank upon this mortgage or some part thereof, were contrary to the Bank Act, and that the property was free from the mortgage, or that the amount received under it might be paid into Court, and applied in payment of the claims of Smith's creditors.

Held, that no such declaration should be made in the absence of Steele, who was liable to the bank as endorser of a promissory note of Smith for \$,000 collateral to the mortgage.

Aylesworth, Q.C., for the plaintiff.

McCarthy, Q.C., for the defendants.

Ferguson, J.]

NEIL v. ALMOND.

[Dec. 13, 1897.]

Execution against lands—10 years old—Renewal—Lien money charged upon land—Proceeding under fi. fa.—R.S.O. c. 111, s. 23.

The right of an execution creditor under a fi. fa. lands is a "lien," the money mentioned in it is money "charged upon lands" taking steps to sell under it is a "proceeding" under above statute: and such proceeding under a fi. fa. more than ten years old even although renewed from year to year will be enjoined.

W. H. P. Clement, for purchaser. *W. H. Blake*, for execution creditor.

R. B. Beaumont, for a mortgagee.

Meredith, C.J., Rose, J.,
MacMahon, J.]

CONNOLLY v. DOWD.

[Dec. 14, 1897.]

Discovery—Examination of party—Residence out of jurisdiction—Subpoena—Special order.

Appeal by the plaintiff from an order of FALCONBRIDGE, J., in Chambers, affirming an order of the Master-in-Chambers, requiring the plaintiff to attend, at his own expense, for examination for discovery pursuant to a subpoena and appointment served upon him at Toronto for his examination there, he being only temporarily in Toronto when served, his residence being out of the jurisdiction, and he having failed to attend for examination pursuant to the subpoena and appointment.