

blackboard on which were the names of the horses, jockeys, etc., taking part in the race, with the track quotations, and, as the race was being run, an operator called off the progress thereof, giving the name of the winner, and of the second and third horses, and marked them on the board. Duplicate tickets were furnished at a wicket in the tent to applicants, which requested defendant to telegraph B, at the race-track, to place a certain amount of money on a horse named by an applicant at track quotations, and upon transmission thereof agreed to pay defendant ten cents, and that all liability on his part should cease, etc. On the tickets being handed in, one of them was stamped with date of its receipt, and returned to the applicant. The money so received was transmitted to B, and placed by him with bookmakers on the track, B paying defendant a percentage on the moneys received for him and ten cents on each application. B. had an agent in another part of the village whom he furnished with money to pay any winnings by remitting same to him, or giving him orders on defendant for stated sums.

Held, that the defendant was properly convicted, under ss. 197 and 198 of the Code, of keeping a common betting house.

J. R. Cartwright, Q.C., for the Crown.

Oster, Q.C., *Aylesworth*, Q.C., and *Murdoch*, for the defendant.

MACMAHON, J.]

MCINTYRE *v.* FAUBERT.

[March 19.

Assignee for creditors—Sheriff—Sale of lands—Statute of Frauds—Sufficient memorandum—Signature of sheriff.

Action tried at Cornwall. The plaintiff, sheriff of the county, as assignee of an insolvent under R.S.O., c. 124, advertised the sale of the equity of redemption of certain lands of the insolvent, which were subject to encumbrances. He was represented at the sale by the deputy-sheriff, who verbally announced that the property was sold subject to the mortgages, and the defendant purchased for \$10, which he paid. A receipt was given to the defendant for the \$10, stating it to be "the purchase money on village lot four in Lancaster," being the lands in question, which receipt was signed by the deputy-sheriff. Afterwards the first mortgagees sold the land for about \$500 less than what had been stated to be, at the sale, the amount of the encumbrances on it, and this action was brought, claiming the said deficiency as damages for breach of the alleged implied covenant of the defendant to pay off the encumbrances.

Held, that the above receipt was not a sufficient memorandum, within the Statute of Frauds, to bind the defendant. The sheriff selling as assignee was in a different position to that of a sheriff selling under an execution, who is the agent of both vendor and purchaser, and can sign a memorandum to bind a purchaser in the same way as an auctioneer can. But the signature of the sheriff as assignee is not sufficient.

Held, further, that the conditions and particulars, which did not set out the encumbrances, could not be added to by verbal declaration at the time of sale.

Stewart and *A. I. McDonell* for the plaintiff.

MacLennan, Q.C., for the defendant.