

Province of Manitoba.

COURT OF APPEAL.

Full Court.]

GALBRAITH v. SCOTT.

[Feb. 26.

Chattel mortgage—Affidavit for renewal—Words having same meaning as those in form prescribed—Ownership of off-spring of mares covered by mortgage—Removal of chattels from division when mortgage registered—Subsequent purchaser—R.S.M. 1902, c. 11, ss. 20, 29.

The three plaintiffs, respectively, had purchased from one Brown four colts the off-spring of two mares upon which Brown had given the defendant a chattel mortgage, the description concluding with the words "and also the increase from the mares." The plaintiffs were purchasers of the colts for value and received delivery of them from Brown without any notice of the defendant's claim. Defendant having afterwards seized and removed the colts under his mortgage, plaintiffs replevied them.

Held, that the common law principle "partus sequitur ventrem" applied and that the legal estate in the colts was in the defendant even without the special proviso to that effect in the mortgage. The case was not analogous to that of a mortgage given to cover future acquired chattels, a title to which might be obtained by a purchaser for value without notice before the mortgagee exercised any act of possession.

Dillarn v. Doyle, 43 U.C.R. 442, and *Temple v. Nicholson*, Cassels Sup. Ct. Digest, 114, followed.

Held, also, that the expression "kept on foot" in the defendant's affidavit for renewal of the mortgage pursuant to s. 20 of the Bills of Sale and Chattel Mortgage Act, R.S.M. 1902, c. 11, meant the same thing as the words "kept alive" used in that section, and the statute was sufficiently complied with: *Emerson v. Bannerman*, 19 S.C.R. 1.

The plaintiff Roper had removed the animal purchased by him from the division in which the chattel mortgage was registered to another division where he had it for over a year before its seizure by defendant. A certified copy of the mortgage had, however, been registered in the latter division, pursuant to s. 29 of the Act, within the required time.