credit, and in accordance with their custom in such cases, prepared a document called a hire receipt, which acknowledged the receipt of the organ on hire. It contained a stipulation that the signer might purchase the organ at the price of $130, payable in two equal instalments, on the 1st February, 1875, and the 1st February, 1876, but with the condition that until the whole of the purchase money should be paid, the organ should remain the property of the plaintiffs on hire, and in default of punctual payment of either instalment, or the monthly rental in advance, the plaintiffs might resume possession of the instrument without any previous demand, although a part of the purchase money might have been paid, or a note or notes given on account thereof.

This receipt and a note dated 17th February, 1874, payable four months after date, were signed by R, but it was afterwards observed that the receipt bore no date, whereupon the book-keeper filled in the 25th February, 1874. The plaintiffs discounted the note with their bankers, and shortly after maturity obtained a renewal, and returned it to R. The first instal ment was paid, and renewals of the note were given until September, 1875. In May, 1876, R transferred the organ to Ouillette & Bickle, as security for a debt he owed them. He represented to them that he had paid the purchase money, and produced as evidence the promissory note of February 17th, 1874, which had been returned to him by the plaintiffs upon renewing. The note bore marks of having been discounted, but there was nothing to connect it with the organ. The organ was brought to the house of J. W. Bickle, one of the defendants, where it remained until it was seized by the plaintiffs' agents, and removed to the express office. The defendant, George Bickle, by the direction of J. W. Bickle, retook it and brought it back to the house in which they both resided. Subsequently J. W. B. sold the instrument to George.

Held, (Moss, C. J. A., Burton, Patterson, and Morrison, JJ. A.) reversing the judgment of the County Court, that the plaintiffs were not estopped from proving their ownership of the property.

Held, also, that there was ample evidence of a joint conversion.

Held, also, that the insertion of the date in the hire receipt was an immaterial alteration.

Held, also, that discounting the note was not a waiver of their right of property.

H. Cameron, Q. C., for the appellants.
S. Richards, Q. C., for the respondents.

Appeal allowed.

From Chy.] [January 16.

ONTARIO BANK V. SIRR.

Priority of claims.

The plaintiffs, who were execution creditors of William Sirr, filed a bill to set aside a conveyance of an equity of redemption from him to his son, Alexander Sirr, as fraudulent and void. The conveyance was set aside, and the decree referred it to the master to take the accounts and declared the lien of Alexander Sirr, *in priority to the plaintiff's claim*, for whatever he paid to redeem the mortgage and for improvements. In default of payment a sale was ordered, the proceeds to be applied in payment of the amounts found due to Alexander Sirr and the plaintiffs and other incumbrancers in the order of their priority. But in the event of the purchase money being found insufficient to pay the amount found due to the plaintiffs, it was ordered that William Sirr should pay the deficiency; and it was further ordered that the amount of such deficiency, to the extent of the costs taxed to the plaintiffs, should be paid by both the defendants, William Sirr and Alexander Sirr. The land was sold under the decree. Alexander Sirr bought it for $1,850, but he failed to carry out the purchase. It was afterwards sold a second time, when it produced only $1,350. The master, by his subsequent report, found due to the plaintiffs for principal, interest and costs, $1,143.12, of which the sum of $808.79 was for costs.

Held, (Moss, C. J. A., Burton, Patterson, and Morrison, JJ. A.) reversing the judment of the Court of Chancery, that under the circumstances the plaintiffs were entitled to priority over Alexander Sirr for their whole debt and costs, inasmuch as the decree rendered Alexander Sirr liable to pay any part of the amount found due to the plaintiffs, which the purchase money, after paying charges prior to the plaintiffs, was insufficient to cover, provided that said part did not exceed the taxed costs, in which event he was only liable to pay the amount of the costs.

Guthrie, Q.C., and *Foster*, for the appellants,
Hamilton, for the respondents.

Appeal allowed.