

L. F., of said one-sixth to the Anticosti Company was a nullity, because the Act incorporating the island of Anticosti was *ultra vires* of the Dominion Government, and that the sale by W. L. F., as attorney for his mother, to himself as representing the Anticosti Company, was not valid.

The Anticosti Company was one of the defendants in the action for licitation and the appellant an intervening party; no proceedings were taken by respondent prior to judgment attacking either the constitutionality of the Island of Anticosti Company's charter or the status of the plaintiff now respondent.

Held, affirming the judgment of the court below, Sir W. J. RITCHIE, C.J., and GWYNNE, J., dissenting, that as the said Dame C. Langan had herself recognised the existence of the Company and as the appellant the legal representative of Dame C. Langan, was a party in the suit ordering the licitation of the property, she, the appellant, could not now on a report of distribution raise the constitutional question as to the validity of the Act of the Dominion Parliament constituting the Company, and was estopped from claiming the right of setting aside a deed of sale for which her mother had received good and valuable consideration.

Kerr, Q.C., for appellant.

Laflamme, Q.C., and *David*, for respondent.

Appeal dismissed with costs.

Application for leave to appeal to the Privy Council was refused. See *Canada Gazette*, Vol. II., p. 418.

DEDRICK v. ASHDOWN.

Chattel mortgage—Power of sale—Exercise of possession of goods by mortgagor—Implied covenant for—Covenant not to sell goods Ordinary course of business.

D., a trader, being indebted to A., gave him a chattel mortgage of all his stock-in-trade and business effects. The mortgage contained a clause, among others, to the effect that if the mortgagor should attempt to sell or dispose of, or in any way part with the possession of the said goods and chattels, or to remove the same from his business premises, the mortgagee might take possession of and sell them, as in case of default in payment.

After the mortgage had been given and registered, A. obtained judgment in a suit previously begun against D., and issued an execution, under which the sheriff seized and sold the goods covered by the mortgage. The execution, was set aside by the court as being issued against good faith, and D. brought an action of trespass, with a count in trover, against A. for the wrongful seizure and conversion of his goods. Upon the pleas of not guilty and not possessed, the defendant in such action attempted to justify his entry and seizure of the goods under the chattel mortgage, alleging a breach of the covenant not to sell.

Held, 1. That the terms of the chattel mortgage implied an agreement that the mortgagor was to remain in possession of the goods mortgaged until default, there being no express provision to the contrary.

Held, 2. That selling or disposing of the goods, as in the above provision only meant sales other than in the ordinary course of business.

Held, 3. That the defendants acted in the seizure and sale of the goods only under the execution, and could not justify for the wrongful seizure under the mortgage when the mortgagor was guilty of no default.

Judgment of court below 4 Man. L. R. 139 reversed.

Appeal allowed with costs.

Ewart, Q.C., for appellant.

Robinson, Q.C., for respondent.

[June 14.

MERCHANTS' MARINE INSURANCE CO. v. BARSS.

Marine insurance—Interest insured—Not disclosed when policy issued—Right to claim on—Notice of abandonment—Authority to give.

B. & Co., part owners of the barque L., cabled to V., managing owner at St. John, N.B., "Insure hull . . . on our account." The application made by V. stated that "insurance is wanted by H. B. & Co., on account of themselves," and the policy issued thereon insured the barque "on account of whom it may concern." The barque being lost, notice of abandonment was given to the insurers by V., on account of B. & Co., V. having no special authority to give such notice, B. & Co.,