

Held, on appeal, 1. That the defence above quoted did not amount to a plea of estoppel.

2. That in any event the lease having expired before the commencement of the action, there was no estoppel.

New trial ordered. Costs to be costs to plaintiff in any event of the cause. Defendant to have leave to amend.

A. B. Hudson and Anderson, for plaintiff. Potts, for defendant.

Full Court.]

REX v. CLEGG.

[June 8.

Money Lenders Act—Assignment of salary—Evidence of loan—Evidence that accused made a practice of lending at usurious rate—Oral testimony to explain written contract.

The accused was prosecuted under the Money Lenders Act, R.S.C. 1906, c. 122, for lending \$35.00 to Hubert Weiss on a contract on agreement calling for the repayment of \$56.00 by 20 weekly payments of \$2.80 each, thereby exacting a rate of interest greater than that authorized by the said Act. The contract signed by Weiss was in the form of an assignment of his monthly salary for several months to commence at a later date which was not to be acted on or notified to his employer in case Weiss should make the stipulated payments of \$2.80 per week, the first of which was to be made in four days after the advance was made. There was no covenant to make these payments. Oral evidence and the entries in the books kept by the accused were admitted to shew the true nature of the transaction. It was contended on behalf of the accused that the transaction was a purchase and not a loan, inasmuch as the assignee would be without remedy if the borrower should die or fail to earn any salary, and she objected to the admission of the oral and other testimony to contradict or explain the contract.

Held, that the oral testimony and book entries were admissible, and they together with the assignment were sufficient evidence of a loan within the meaning of the Act; but that, as no evidence had been given to shew that the accused had made a practice of lending money at a higher rate than ten per cent. per annum, the prosecution had failed and the conviction must be quashed.

Patterson, D.A.-G., for the Crown. McMurray, for the prisoner.