

SUPREME COURT OF CANADA.

OTTAWA, 11 March, 1895.

MCDONALD V. CUMMINGS.

Nova Scotia.]

Chattel mortgage—Preference—Hindering and delaying creditors—Statute of Elizabeth.

In an assignment for benefit of creditors, one preferred creditor was to receive nearly \$300 more than was due him from the assignor, on an understanding that he would pay certain debts due from the assignor to other persons, amounting in the aggregate to the sum by which his debt was exceeded. The persons so to be paid were not parties to, nor named in, the deed of assignment.

Held, reversing the decision of the Supreme Court of Nova Scotia, Taschereau, J., dissenting, that as the creditors to be paid by the preferred creditor could not enforce payment from him or from the assignee, and would be unable to recover from the assignor, who had parted with all his property, they would be hindered and delayed in the recovery of their debts, and the deed was therefore void, under the statute of Elizabeth.

Appeal allowed with costs.

Ross, Q.C., and McNail, for appellant.

Harrington, Q.C., for respondent.

6 May, 1895.

CLINCH V. PERNETTE.

Nova Scotia.]

Lease for lives—Renewal—Evidence—Custody of lease—Duration of life—Presumption as to—Registry laws.

In 1805 a lease was executed for the lives of the lessee and two others, "and renewable for ever," with a condition that if any of the lives should fall, a new life should be inserted and a renewal fine paid within twelve months, otherwise the right of renewal should be forfeited. It was also provided that if any question should arise as to the death of any one on whose life the lease depended, the person seeking to benefit thereby must prove him to be alive, or else he shou'd be presumed to be dead.

In 1884 a purchaser from the assignee of the reversion entered into possession, and in 1890 an action was brought by those claiming through the lessee to recover possession, and for an account of mesne profits. The plaintiffs also claimed a declara-