Held, per PATTERSON, J., that although A. had no sufficient authority to sign the deed for L., yet there was an agreement to compound the debt which was binding on L., and the understanding that L. was to be paid in full would be a fraud upon the other creditors of A.

Appeal allowed with costs.

Eaton, Q.C., for the appellant.

Newcombe for the respondent.

NOVA SCOTIA.] [June 12.

O'BRIEN *v.* COGSWELL.

Assessments and taxes—Lien—Priority of mortgage made by Statute—Construction of Act—Healing clause—Effect and application of.

The Halifax City Assessment Act, 1888, made the taxes assessed on real estate in said city a first lien thereon, except as against the Crown.

Held, affirming the judgment of the Court below (21 N. S. Rep. 155, 279), that such lien attached to a lot assessed under the Act, in preference to a mortgage made before the Act was passed.

The Act provided that in case of non-payment of taxes assessed upon any lands thereunder, the city collector should submit to the Mayor a statement in duplicate of lands liable to be sold for such non-payment, to which statements the Mayor should affix his signature and the seal of the Corporation; one of such statements should then be filed with the city clerk and the other returned to the collector with a warrant annexed thereto, and in any suit or other proceeding relating to the assessment on the real estate therein mentioned, any statements or lists so signed and sealed should be received as conclusive evidence of the legality of the assessment, etc. In a suit to foreclose a mortgage on land which had been sold for taxes under this Act, the legality of the assessment and sale was attacked.

Held, per STRONG, TASCHEREAU, and GWYNNE, JJ., that to make this provision operative to cure a defect in the assessment caused by failure to give a notice required by a previous section, it was necessary for the defendants to show affirmatively that the statements had been signed and sealed in duplicate and filed as required by the Act; and the production and proof of one of such statements was not sufficient.

Per RITCHIE, C.J., and PATTERSON, J., that it was sufficient to produce the statement returned to the collector signed and sealed as required, and with the necessary warrant annexed, and in the absence of evidence to the contrary, it must be assumed that all the proceedings were regular, and that the provision of the statute had been complied with.

The Act also provided that the deed to a purchaser of lands sold for taxes should be conclusive evidence that all the provisions with reference to the sale had been complied with.

Held, per STRONG, TASCHEREAU, and GWYNNE, JJ., that this provision could only operate to make the deed available to cure defects in the proceedings connected with the sale, and would not cover the failure to give notice of assessment required before payment of the taxes could be enforced.

Held, per RITCHIE, C.J., and PATTERSON, J., that the deed could not be invoked in the present case to cure any defects in the proceedings, as it was not delivered to the purchaser until after the suit commenced; therefore, a failure to give notice that the land was liable to be sold for taxes, which notice was required by the Act, rendered the sale void.

Appeal dismissed with costs.

Sedgewick, Q.C., and *Lyons*, for appellant.

Lash, Q.C., and *McDonald*, for respondents.

NEW BRUNSWICK.] [June 13.

PROVIDENCE WASHINGTON INSURANCE CO. *v.* GEROW.

Marine Insurance—Construction of policy—Port on west coast of South America—Guano Islands—Commercial usage.

A vessel was insured for a voyage from Melbourne to Valparaiso for orders, thence to a loading port on the western coast of South America, thence to United Kingdom. She went to Valparaiso, and from there proceeded to Lobos, an island from twenty-five to forty miles off the west coast of South America, where she loaded guano and sailed for England. Having met with heavy weather she returned to Valparaiso, and a survey was held by which it appears that to repair her would cost more than she would be worth afterwards. The owner claimed payment under the policy for a constructive total loss, which was resisted on the ground of deviation in the vessel loading at a port off the coast.