

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

C. set up his purchase, on which defendant took it away from where it was kept and gave it to M. He was then convicted under 32-33 Vict. c. 21, s. 110, the conviction stating neither the time nor place of the commission of the offence.

Held, no offence within that section, and conviction also bad, as showing neither time nor place of commission of offence.

A police magistrate cannot try summarily for an offence under above sec. of act.

Clement, for application.

Holman, contra.

CHANCERY DIVISION.

Ferguson, J.]

[March 17.]

ROBINSON v. COOK.

Mortgage on going factory—Estoppel—Partner of mortgagor acquiescing in mortgage—Assignee for benefit of creditors.

S. gave a mortgage to R., partly for a past debt, and partly for future advances on certain land, describing them, "together with the machinery and foundry apparatus now in use and that may in future be used in the brick and frame building situate on the said lots used as a machine shop and a foundry down stairs and as a printing office up stairs, the machinery being composed of one printing press, etc., (describing various articles of machinery) together with all the machinery now in or that may hereafter be put in the said premises."

In the proviso in the mortgage, the property was mentioned as "lands and chattels."

The mortgage though duly registered in the registry office, was not filed as chattel mortgages are required to be by statute, and there was not the change of possession mentioned in the statute.

Held, that this was, in effect, a mortgage of the machine shop and foundry, and of the printing office, and had the same force and effect as if these had been mortgaged, naming them. The mortgage transaction was in respect of going concerns, and not in respect of land as such, and chattels as such, and the use of the word "chattels" was apparently

for greater caution, lest any of the property might possibly be considered chattels. Therefore, certain articles in question in this action, viz.: two vertical drills, a planer, a grindstone and three iron lathes, which were at the time of the execution of the mortgage on the premises, and were essential parts of these going concerns, passed by the mortgage to the mortgagees.

Held, also, following *Kitching v. Hicks*, ante p. 112, the mortgage was in any event good without registration, so far as it was a mortgage upon property brought upon the premises after its date.

The mortgagees now having commenced proceedings under the above mortgage, one C. professed a claim or title to some of the property as an alleged partner of the mortgagor. The evidence, however, showed that he was present when the mortgage was given, and knew all about the transaction; that the money that had been advanced by the mortgagees, was partly for the purposes of the printing office, in which only he claimed to be interested as such alleged partner, and the money then to be advanced, was to be partly for the same purposes, and that he stood quietly by when the transaction was made with the mortgagees without asserting any claim to ownership or part ownership of the property, or giving the mortgagees any information whatever as to the claim he now set up for the purpose of subtracting from the rights of the mortgagees.

Held, that under these circumstances, C. was clearly estopped from setting up any right or title as against the mortgagees to the property, and the mortgagees title was just the same as it would have been if C. had joined in the mortgage to them.

The defendant in the present action, an assignee under a deed for the benefit of the creditors of the mortgagor, had removed or was threatening to remove certain of the property comprised in the mortgage. The plaintiffs, besides claiming foreclosure of their mortgage claimed, also, an injunction to restrain the defendant from so acting. In his defence he alleged that at the time of the execution of the mortgage, he was a creditor of the mortgagor, and that after the commencement of this present suit he recovered a judgment for the amount of his debt, and he