

SUPREME COURT OF CANADA.

OTTAWA, 20 February, 1897.

Nova Scotia.]

MACKENZIE v. MACKENZIE.

Title to land—Beneficial interest—Parties “in pari delicto.”

In 1875 G. M. entered into an agreement with the owner to purchase two lots of land in Halifax and entered into possession, and commenced to build a house on one of said lots. In 1877 he was called upon to carry out his agreement and pay the purchase money, the house not being completed, but sufficiently so to enable him to occupy it. At that time G. M. had become financially embarrassed and could not make the payment. He applied to a building society for a loan, but as there were judgments recorded against him which would have priority, he caused the deed to be executed in the name of W. M., his nephew, and then procured the loan. W. M. afterwards took possession of the property, and an action was brought against him by G. M. to compel him to execute a conveyance and for an account of rents and profits. The trial judge held that the deed was taken in the nephew's name to hinder, delay and defraud creditors, and refused the relief asked for. The court *en banc* reversed this judgment and ordered W. M. to convey the property to G. M.

Held, affirming the decision of the Supreme Court of Nova Scotia, that it did not appear from the evidence that G. M. in having the deed made in the name of his nephew had the intent of defrauding his creditors, who were not prejudiced and have not complained; that the parties were not *in pari delicto*, and G. M. was entitled to relief as the more excusable of the two.

Appeal dismissed with costs.

Whitman, for the appellant.*Silver*, for the respondent.

10 March, 1897.

Ontario.]

CANADIAN COLOURED COTTON MILLS Co. v. TALBOT.

Negligence—Employer and employee—Accident—Proximate cause—Evidence for jury.

T. was employed as a weaver in a cotton mill and was injured, while assisting a less experienced hand, by the shuttle flying out of the loom at which the latter worked, and striking her on the