

MANITOBA.

COURT OF QUEEN'S BENCH.

Full Court.]

[July 13.

IN RE HAMILTON TRUSTS.

Principal and surety—Rights of surety to securities held by creditor—Further advance by creditor.

Judgment of TAYLOR, C.J., noted *ante* p. 351, reversed with costs; and *Held*, that the petitioner James Hamilton was entitled to the benefit of the security held by the respondent Drewry for the loan guaranteed by him, and now paid off out of his property, in priority to a subsequent advance made by Drewry to the debtor on property of the latter. *Duncan, Fox & Co. v. North and South Wales Bank*, 6 App. Cas. 1, distinguished on the ground that in the present case the surety had joined in a mortgage to the creditor of his own and the debtor's property, and would have had a right to a conveyance of all on payment of the debt.

Howell, Q.C., and *Monkman* for the petitioner.

Perdue for the respondent.

BAIN, J.]

[July 23.

TRUST AND LOAN COMPANY v. WRIGHT.

Sale of goods—Immediate delivery—Change of possession—Bills of Sale Act.

This was an appeal from the decision of the judge of the County Court of Virden in an interpleader issue as to the ownership of some horses seized under execution against the defendant, and claimed by his mother.

The facts, as found by the learned judge, were as follows: On the 2nd of October, 1894, a verbal sale of the horses in question was made to the claimant, and part of the purchase money was then paid, and the claimant stated in her evidence that the horses were "hers from the 2nd of October." For the convenience of the claimant, however, the defendant continued in actual possession of the horses until the 12th of November following, when he called upon the claimant and told her that he was going away, but had left everything all right, and that a boy in the claimant's employment could take care of everything, and thereafter the claimant, by her servants, remained in actual possession of the horses.

The judge at the trial found that the sale was *bona fide*, but the plaintiffs contended that it was void as against their execution, although not placed in the bailiffs' hands until the following January, because there was no immediate delivery as required by the Bills of Sale Act, R.S.M., c.10, s. 2, and relied upon *Jackson v. Bank of Nova Scotia*, 9 M.R. 75.

Held, that the sale was good as against the plaintiffs, and that that case might be distinguished on the ground that here there was a delivery on the 12th of November, which might amount to a fresh agreement of sale, whereas in the *Jackson* case there was no subsequent act or assent of the vendor to the taking