

administrators of the estate of John Stewart and his widow and children, upon mortgages of lands in the city of Ottawa made by John Stewart, for immediate possession and foreclosure or sale. There was no dispute as to the right of plaintiffs to recover in respect of the balance due upon one of the mortgages, that made in 1878 to the North British Canadian Investment Company and assigned to John Heney. The defence as to the other mortgage, made in 1892 to John Heney, was that it was given as collateral security for a loan represented by a promissory note for \$16,000 made by Archibald Stewart and indorsed by Catharine and John Stewart, and that, after the last renewal of that note went to protest on 12th January, 1894, the amount thereof was included in a note for \$39,760.53, at three months, made by Archibald Stewart and indorsed by Catharine Stewart, and thereby John Stewart's estate was discharged from any liability on the mortgage. The question was whether the creditor's remedy was intended to be reserved.

J. Christie, Ottawa, and W. Greene, Ottawa, for plaintiffs.

G. F. Henderson, Ottawa, and A. E. Fripp, Ottawa, for adult defendants.

C. J. R. Bethune, Ottawa, for the official guardian.

MACMAHON, J., referred to Wyke v. Rogers, 1 DeG. M. & G. 408; Owen v. Homan, 4 H. L. C. 997; Muir v. Crawford, L. R. 2 Sc. App. at p. 457; Gorman v. Dixon, 26 S. C. R. 87; and said that the question was as to the intention of the parties, to be gathered from the terms of the agreement, having regard to the position of the parties at the time; and the fair inference to be drawn in this case was that the rights of Heney against the estate of John Stewart on the mortgage were intended to be reserved. Judgment for plaintiffs as prayed with costs. Reference to Master at Ottawa.

FEBRUARY 19TH, 1903.

DIVISIONAL COURT.

RANDALL v. OTTAWA ELECTRIC CO.

Negligence—Injury to Linesmen of Electric Company—Negligence of Strangers—Duty owed by—Precautions against Danger—Findings of Jury.

Motion by defendants Ahearn & Soper (Limited) for judgment dismissing the action, and motion by plaintiff for judgment in his favour on the findings of the jury, in an