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SUPREME COURT OF CANADA.

OTTAWA, June 12, 1890.

Nova Scotia.]

O'BRIEN v. COGSWELL.

Assessments and taxes—Assessment Act—Lien—Priority of—Mortgage made before 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 on 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, &c. In a suit to foreclosure 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 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.

OTTAWA, June 13, 1890.

Nova Scotia.]

LAWRENCE v. ANDERSON.

Debtor and Creditor—Assignment in trust—Release to debtor by—Authority to sign—Ratification—Estoppel.

L. brought an action against A., on an account stated, to which the defence set up was release by deed. On the trial it was shown that A. had executed a deed of assignment in trust for the benefit of his creditors, and under authority by telegram had signed the same in the name of L. After the execution of the deed by A. the creditor, L., continued, with knowledge of the deed, to send him goods, and about a month after he wrote A. as follows:—"I have done as you