

Divisional Court.]

[May 25.]

BANK OF HAMILTON v. TAMBLYN.

*Chattel mortgage—Informality cured by taking possession—Insolvency of mortgagor—Prior seizure by mortgagees under execution—Preference—*48 Vict. c. 26, s. 2.

A chattel mortgage made by D. to McL. was given to secure a sum made up of debts due to McL. and two other persons; McL. made the usual affidavit of *bona fides*, asserting that the whole sum was due to him; no trust of any kind appeared upon the mortgage, though the intention was that McL. should hold it as trustee for the other two. The mortgage was filed within the proper time after its execution. McL. assigned the mortgage to the plaintiffs, who afterwards obtained judgment against D., and under the execution the sheriff seized the property covered by the mortgage. After this seizure the plaintiffs instructed the sheriff to withdraw, and then took and held possession of the property under the mortgage. The defendants placed writs of execution against the goods of D. in the hands of the sheriff after the plaintiffs had taken possession under their mortgage. D. was solvent when he gave the chattel mortgage, but insolvent when the plaintiffs took possession.

*Held*, that the fact that no trust was declared on the face of the mortgage was nothing more than an informality, and was cured by the taking possession before the rights of creditors had attached on the chattels; and neither the insolvency of the mortgagor at the time of taking possession nor the fact of the seizure under execution before taking possession affected the position of the plaintiffs.

*Held*, also, that the taking possession could not be viewed as a preference within 48 Vict. c. 26, s. 2.

*J. J. Scott*, for the plaintiffs.

*H. J. Scott, Q.C.*, for the defendants.

Full Court.]

[May 28.]

REGINA v. ABBOTT.

*Canada Temperance Act—R. S. C. c. 106, ss. 2 and 103b—Police magistrate for one of a union of counties—Jurisdiction.*

Having regard to the provisions of s. 103b of the Canada Temperance Act, R. S. C. c. 106,

as interpreted by s. 2, an union of counties united for municipal purposes cannot be said to have a police magistrate by reason of one of the counties so united having one; and a conviction by one commissioned as police magistrate for the county of Dundas for an offence against the Act, committed in the county of Dundas, one of the united counties of Stormont, Dundas and Glengary, was quashed for want of jurisdiction.

*A. H. Marsh*, for the defendant.

*Delamere*, for the complainant.

Full Court.]

[May 28.]

REGINA v. ROE.

*Canada Temperance Act—Police magistrate, jurisdiction of—County and town—R. S. C. c. 106, s. 103b—R. S. O. (1887) c. 72, s. 11—Information and summons—Irregularity.*

A person commissioned as police magistrate for the county of Huron, his commission not excluding the town of Wingham, and having also a separate commission as police magistrate for the towns of Clinton, Goderich, Wingham and Seaforth respectively, all being in the county of Huron, convicted the defendant at Wingham of an offence against the Canada Temperance Act, committed at Wingham, but upon an information taken and summons issued at Clinton.

*Held*, having regard to the provisions of s. 103b of the Canada Temperance, R. S. C. c. 106, and of R. S. O. (1887) c. 72, s. 11, that the magistrate had jurisdiction in the town of Wingham under his commission for the county, and had also jurisdiction under that commission to take the information and issue the summons at Clinton; and the fact that he described himself in the information and summons as police magistrate for the town of Wingham did not deprive him of the jurisdiction which he had as police magistrate for the county.

*Regina v. Young*, 13 O. R. 198, overruled.

*Quære*, whether the defendants could object to the regularity of the information and summons, he having appeared in obedience to the summons, and pleaded not guilty.

*Aylesworth*, for the defendant.

*Delamere*, for the complainant.