

ROULEAU, J.]

[Sept. 31.

IN RE IBBOTSON.

Land Titles Act, 1894—Registered transfer—Certificate uncanceled—Mortgages by transferor and transferee—Priorities.

On March 14th, 1892, Wm. G. Ibbotson, the registered owner and holder of a certificate of title of certain lands, transferred them to Mattie E. Ibbotson, who registered the transfer on August 12th, 1892, but no certificate of title was issued to her till June 1st, 1895. On September 6th, 1892, Mattie E. Ibbotson mortgaged the lands to the Canadian Mutual Loan and Investment Company, who registered their mortgage on the same day. On December 11th, 1893 while the certificate of title on the register still stood in the name of Wm. G. Ibbotson, with memorials of the transfer and the Canadian Mutual mortgage endorsed thereon, W. H. Kinnisten took a mortgage from Wm. G. Ibbotson, which he registered on Dec. 13th, 1893.

This was an application by the Canadian Mutual Loan and Investment Company to confirm a sale made by them under their mortgage, and for distribution of the moneys realized.

Held, that, as soon as the transfer to Mattie E. Ibbotson was registered, the land and all interest therein passed to her, and the fact that the Registrar neglected to perform his ministerial duty to cancel the old certificate and issue a new one to her did not invalidate the registration of the transfer or prejudice her position as owner, and she alone could mortgage the lands, and the money realized by the sale after deducting expenses of sale should be paid to the Canadian Mutual Loan and Investment Company.

F. Cave and E. C. Smith for the company.

P. McCarthy, Q.C., and *J. A. Bangs* for Kinnisten.

Southern Alberta Judicial District.

ROULEAU, J.)
In Chambers)

[Oct. 21

O'NEILL v. FARR.

Interpleader issue—Claimant wife of execution debtor—Who should be plaintiff.

This was an application for an interpleader by the sheriff with respect to certain sheep seized under plaintiff's execution, and claimed by the wife of the execution debtor as her separate property. The claimant lived with her husband, and the sheep were seized on the lands occupied by them.

Held, following the rule laid down by STREET, J., in *Doran v. Toronto Suspender Co.*, 14 P.R. 103, that the sheep seized being *prima facie* in the possession of the husband, and the onus, therefore, being on the claimant, the claimant should be plaintiff. *Duncan v. Tees*, 11 P.R. 66 and 296, distinguished. *Ripstein v. Canadian Loan and Investment Company*, 7 Man. L.R. 119, and *Ady v. Harris*, 9 Man. L.R. 127, approved.

C. C. McCaul, Q.C., for the sheriff and execution creditor.

P. McCarthy, Q.C., for the claimant.