deposit in the bank by the Crown, to be recognised as crown monies, and entitled to a first charge upon the assets.

Held (affirming the judgment of the Supreme Court of New Brunswick, GWYNNE, J., dissenting) that the Dominion Government, as representing the Crown in Canada, was entitled to a first lien upon the assets of the insolvent bank in respect to the said sum of $15,000, and that the lien was not taken away by the section of the Bank Act, R.S.C., c. 12, 120, which gives note holders a first lien on such assets, it not being competent for the legislature to deprive the Crown of its prerogative, except by express words to that effect. See the Interpretation Act, R.S.C., c. 1, s. 7, s-s. 46.

Held, also (reversing the judgment of the court below, STRONG, J., dissenting) that the Government could not claim such lien in respect of the sum deposited by the insurance association, it not being public money, but held by the Crown merely as trustees for the society.

The judges deciding this case were : SIR W. J. RITCHIE, C.J., and STRONG, TASCHEREAU, GWYNNE, and PATTERSON, JJ.

Appeal allowed as to the sum of $45,000, and dismissed as to the sum of $15,000.

A. A. Stockton and *C. A. Palmer*, for the appellants.

Weldon, Q.C., and *Barker*, Q.C., for the respondents.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE.

COURT OF APPEAL.

From ROSE, J.] [March 5, 1889.

DANIELS *v.* MOXON.

Mortgage—Shares—Sale — Wilful neglect or default.

The defendant, who was mortgagee of certain shares in a manufacturing company, offered them for sale at auction, when one N. was declared the purchaser. The plaintiff, who was entitled to the shares subject to the defendant's claim, knew of and ratified the sale. The purchaser refused upon various grounds to carry out the sale, and no attempt was made by the defendant to compel completion of the contract. Subsequently the shares fell very much in value.

Held (BURTON, J.A., dissenting), that there was no duty cast upon the defendant to take proceedings against the purchaser to compel completion, and that he was not liable to account for the shares at the price that would have been realized had the sale been completed. The plaintiff could have paid the defendant's claim and then have herself taken proceedings against the purchaser, and not having done so was not entitled to complain.

Judgment of ROSE, J., affirmed.

McCarthy, Q.C., and *P. McPhillips* for the appellant.

W. Cassels, Q.C., and *F. R. Ball*, Q.C., for the respondent.

From FERGUSON, J.] [March 5, 1889.

DAY *v.* DAY.

Fraudulent conveyance—Intent to defeat creditors—Secret trust—Evidence—Pleading.

If a defendent wishes to set up in answer to an action to declare him a trustee of land, the defence that the land was conveyed to him for a fraudulent purpose, he must in his pleading specifically say so, and admit his own criminality in joining in a criminal act.

If the plaintiff can make out his case without disclosing the alleged fraud, the defendant will not be allowed to show as a reason why the plaintiff should not recover, the fraud in which the defendant himself participated.

Judgment of FERGUSON, J., reversed.

Hardy, Q.C., for the appellant.

J. W. Bowlby for the respondent.

From STREET, J.] [Jan. 14, 1889.

MCARTHUR *v.* THE NORTHERN AND PACIFIC JUNCTION RAILWAY CO., ET AL.

Railways—Constitutional law — Limitation of action—R.S.C., c. 109, s. 27—Timber licenses — Intervals between licenses — Trespass — Continuing damage—R.S.O. (1887), c. 28.

The defendants, a railway company incorporated by an Act of the Parliament of Canada, and subject to the provisions (among other provisions) of s. 27 of the Railway Act of Canada, built their road through lands in the Province of Ontario, the fee of which was in the Crown, but over which the plaintiffs had for three