

REPORTS AND NOTES OF CASES

Dominion of Canada.

SUPREME COURT.

HOGABOOM v. RECEIVER-GENERAL.

Ontario]

IN RE CENTRAL BANK.

[Dec. 9, 1897.

*Winding-up Act—Moneys paid out of Court—Order made by inadvertence—Jurisdiction to compel repayment—R.S.C. c. 129, ss. 40, 41, 94—Locus standi of Receiver-General—55 & 56 Vict., c. 28, s. 2—Statute, construction of.*

The liquidators of an insolvent bank passed their final accounts and paid a balance, remaining in their hands, into Court. It appeared that by orders issued either through error or by inadvertence, the balance so deposited had been paid out to a person who was not entitled to receive the money, and the Receiver-General for Canada, as trustee of the residue, intervened and applied for an order to have the money repaid in order to be disposed of under the provisions of the Winding-up Act.

*Held*, affirming the decision of the Court of Appeal for Ontario, that the Receiver-General was entitled so to intervene, although the three years from the date of the deposit mentioned in the Winding-up Act had not expired.

*Held*, also, that even if he was not so entitled to intervene, the provincial courts had jurisdiction to compel repayment into Court of the moneys improperly paid out. Appeal dismissed with costs.

*S. H. Blake, Q.C.*, and *W. A. Smythe*, for the appellants. *Newcombe, Q.C.*, and *F. E. Hodgins*, for the Receiver-General. *McCarthy, Q.C.*, for the respondent Holmested.

Ontario.]

BURNS & LEWIS v. WILSON.

[Dec. 9, 1897.

*Insolvency—Fraudulent preference—Chattel mortgage—Advances of money—Solicitor's knowledge of circumstances—R.S.O. (1887) c. 124—54 Vict., c. 20 (Ont.)—58 Vict., c. 23 (Ont.).*

In order to give a preference to a particular creditor, a debtor who was in insolvent circumstances, executed a chattel mortgage upon his stock in trade in favour of a money-lender by whom a loan was advanced. The money, which was in the hands of the mortgagee's solicitor, who also acted for the preferred creditor throughout the transaction, was at once paid over to the creditor who, at the same time, delivered to the solicitor, to be held by him as an escrow and dealt with as circumstances might require, a bond indemnifying the mortgagee against any loss under the chattel mortgage. The mortgagee had previously been consulted by the solicitor as to the loan, but was not informed that the transaction was made in this manner to avoid the appearance of violating the Acts respecting assignments and preferences, and to bring the case within the ruling in *Gibbons v. Wilson*, 17 Ont. App. R. 1.