

EMBURY v. WEST.

Chattel mortgage to secure indorser—Relation back to prior agreement—Renewal.

A chattel mortgage to indemnify an endorser or to secure the mortgagee against liabilities otherwise incurred for the mortgagor, if given in good faith in pursuance of an antecedent absolute promise, is not avoided by the Act relating to assignments and preferences by insolvents, merely because it was not given contemporaneously with the indorsement or other liability.

The requirements of section 6 of the Chattel Mortgage Act, as to setting forth an agreement in the mortgage, apply only to mortgage to secure future advances for the purposes therein mentioned.

In the case of a mortgage under that section as security against liabilities incurred by indorsing, or in any other way, all that is necessary is that the liability shall be one not extending for a longer period than one year from the date of the mortgage, and shall be sufficiently described or identified therein.

The head note in *Barker v. McPherson*, 13 A. R. 356, corrected.

The reference in such a mortgage to a possible future renewal or extension of the liability which has not been agreed for, and which the mortgagee is not bound to accede to, does not invalidate the mortgage if in other respects sufficient.

HIGH COURT OF JUSTICE FOR
ONTARIO.*Queen's Bench Division.*

Divl Ct.]

[Nov. 19.]

FINCH v. GILRAY.

Landlord and tenant—Payment of taxes by tenant—Rent—Real Property Limitation Act.

Where there is no contract between landlord and tenant as to payment of taxes on the demised premises the landlord must pay them; and, therefore, payment of the taxes by the tenant must be regarded as part of the compensation which the landlord receives for the use of the land.

And where the tenant agreed to pay the taxes, and six dollars monthly in addition, and did pay the taxes during the whole period of his possession, but did not pay anything else from Christmas, 1867, until March, 1886.

Held, that the payment of taxes was equivalent to payment of part of the rent, and prevented the running of the statutory period of limitation prescribed by the Real Property Limitation Act.

Per STREET, J., dissenting, that the collector could not be treated as the agent of the landlord, and the payment of taxes was not sufficient to take the case out of the statute.

Wallace Nesbitt, for the plaintiff.

J. B. Clarke, for the defendant.

Chancery Division.

Boyd, C.]

[Nov. 28.]

BUTLAND v. GILLESPIE *et al.**Mortmain Act—Toronto General Hospital—16 Vict. c. 220—Devise of land.*

The Act 16 Vict. c. 220, incorporating the Toronto General Hospital, provides that it shall and may be capable of receiving and taking from any person . . . by grant, devise, or otherwise, any lands, or interest in lands, . . . which any such person may be desirous of granting or conveying for the support and use of the hospital.

Held, that the plain meaning of this provision was to capacitate any person to devise land to the hospital, and to qualify the hospital to receive and enjoy beneficially lands so devised, notwithstanding the Mortmain Act, and a devise of lands to the hospital held valid.

Blake, Q.C., and *Creelman*, for the plaintiff.

Moss, Q.C., and *Barwick*, for the defendants.

Boyd, C.]

[Nov. 28.]

TOTTEN v. TRUAX.

Tax sale—Indian lands—R. S. C. c. 43, s. 77.

Held, that R. S. C. c. 43, s. 77, s.s. 3, exempting Indian lands from taxation, only so exempts such lands while the title and interest is wholly in the Crown, but if the Crown sells or locates, then the interest of the purchaser