

and to set aside a chattel mortgage made by one Annie Essa to the defendant.

The action was tried without a jury at London.

G. S. Gibbons, for the plaintiffs.

H. H. Davis, for the defendant.

MASTEN, J., in a written judgment, said that the questions involved related, first, to the priority of the securities held respectively by the plaintiff Struthers and by the defendant; and, second, as between the plaintiff Martin and the defendant, to the validity of the security held by the defendant.

The Nipissing Mining Company Limited, the owners in fee of certain lots in Sudbury, on the 1st November, 1909, leased the lots to Annie Essa for ten years from the 1st December, 1909. The leases of the lots contained no special provision vesting the ownership of the buildings thereon in the lessee. The leases were in special form, permitting the lessors to continue their mining operations, and providing for cancellation of the leases by the lessors on 6 months' notice; in that case only, the lessors were to pay the lessee the value of her buildings.

On the 10th September, 1913, the lessee, being indebted to the plaintiff Struthers, made in his favour a declaration of trust or assignment of the leases by way of collateral security for payment of the defendant; notice of this was given to the lessors. By this instrument, the lessee covenanted to stand possessed of the leases and of the buildings in trust for Struthers, with power to Struthers to sell and convey the leases and buildings; and, in case the leases should be terminated by the lessor before the end of the term, all moneys which should become due and payable to the lessee by the lessors should be payable to Struthers. The lessee also executed a chattel mortgage to the defendant, securing \$2,500, covering the buildings, which were thus treated as personal property.

The defendant's chattel mortgage was ineffective because, under the terms of the leases from the Nipissing company, the lessee had no title of any kind to the buildings which were the subject of the chattel mortgage. These buildings were fixtures erected on the lands of the Nipissing company; as such they were a part of the realty; and, in the absence of any provision in the leases varying the situation, they were the absolute property of the company; and Annie Essa conveyed nothing whatever to the defendant by her chattel mortgage to him. The assignment of the leases to the plaintiff Struthers was entitled to priority.