

stances or of why the money was wanted, or how it was to be applied. Out of the money S. paid off the creditor in question in full. C. afterwards made an assignment for the benefit of his creditors to G., who brought this action to set aside the chattel mortgage.

Held, that the action must be dismissed, for the mortgage was made in consideration of a present *bona fide* advance of money within the meaning of R.S.O. c. 124, s. 3. It could not be said that the "effect of the mortgage" was to prefer the creditor, for this was the effect solely of the act of S., acting apparently altogether for another principal.

The rule is that the fraudulent act of an agent does not bind the principal unless it is done for the benefit of the principal, unless the principal knows or assents to it, or takes an advantage by reason of it.

Moss, Q.C., for the plaintiff.

Walker, for the defendant.

Boyd C.]

[Jan. 9, 1889.

RE PRITIE *v.* CRAWFORD.

Vendor and purchaser act, R.S.O. c. 112—

Equitable interest in land—Effect of fi. fa. lands in Sheriff's hands.

R.W.P. became the purchaser of certain lands under an agreement in writing, but being unable to carry out the agreement he assigned all his interest in it to J.P. At the date of the agreement there were writs of *fi. fa.* lands in the Sheriff's hands, which were subsequently duly renewed and were not paid or satisfied. In an application under the Vendor and Purchaser Act, in which J.P. was making title, it was

Held, that the executions did not bind R.W.P.'s interest under the agreement.

W. N. Miller, Q.C., for the purchaser.

D. Macdonald, for the vendor.

Practice.

FERGUSON, J.]

[Jan. 4th, 1889.

In re HIME and LEDLEY.

Priorities—Execution creditor—Mortgagee—Removal of fi. fa. lands for renewal—Neglect to replace—Mistake—Time.

Rule 894, providing for the renewal of writs

of execution, necessarily intends the removal in each case of the writ out of the actual possession of the Sheriff for the purposes of such renewal. This is an exception to the general rule, and the time during which a writ may for the purposes of renewal be kept out of the hands of the Sheriff without interference with the right of priority is commensurate with the time reasonably necessary to effect the renewal; but the exception cannot be made to extend so as to cover mistakes, never so honestly made, the consequence of which is a failure to replace the writ in the hands of the Sheriff for so long a period as six or seven months.

And where H. placed a writ of *fi. fa.* lands in the hands of a Sheriff in November, 1883, and renewed it from year to year till October, 1886, when he removed it for the purposes of renewal only, and by mistake did not replace it till April, 1887;

Held, that he had lost his priority over L., a mortgagee, whose mortgage was registered against the land of the execution debtor in July, 1885.

Aylesworth, for Hime.

Carson, for Ledley.

C. P. Div'l. Ct.]

[Jan. 7, 1889.

WILSON *v.* McDONALD

Foreign commission—Evidence of a defendant—Application of co-defendant—Material on application—New material on appeal—Costs.

The Court will not hesitate to make an order for a foreign commission for the examination of a witness who is abroad and whose presence cannot be procured for the purpose of giving evidence in Court, because such witness is a co-plaintiff or co-defendant of the person applying. The Divisional Court, on appeal, admitted evidence which was not formally before the Master or Judge in Chambers below, and being satisfied that the defendant McD. could not be induced to return from abroad to give evidence, and that his evidence was important to the defendant C. were of opinion that the latter was entitled to a commission to examine McD. abroad; but gave no costs of the appeal.