

TRUST AND LOAN COMPANY v. STEVENSON ET AL.

Limitations—Mortgage—Payment—R.S.O., c. 111, ss. 22, 23—Bankruptcy and insolvency—27 Vict., c. 18, s. 19.

The assignee in insolvency, under the Insolvent Act of 1864, of the plaintiffs' mortgagor, in 1869 conveyed in part satisfaction of his claim, without covenants on either side, the mortgaged property to a subsequent mortgagee, who had valued his security, the plaintiffs' mortgages being referred to in a recital. The subsequent mortgagee shortly afterwards conveyed the property to a third person, but, notwithstanding this conveyance, continued to pay interest to the plaintiffs till within ten years of the bringing of this foreclosure action.

Held, on a case stated in the action for the opinion of the court, with liberty to draw inferences of law and fact, that it was proper to infer that the provisions of s. 19 of the Insolvent Act of 1864 had been complied with; that under that section the subsequent mortgagee taking over his security would be primarily bound to pay off the prior encumbrances; and that therefore his payments kept alive the plaintiffs' rights.

Judgment of the Chancery Division, 21 O.R. 571, reversed; OSLER, J.A., dissenting.

Marsh, Q.C., for the appellants.

Delamere, Q.C., for the respondents.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

Full Court.]

REGINA v. SMILEY.

[Dec. 24.]

Gaming—Becoming custodian of wager—R.S.C., c. 159, s. 9—Construction of—Restriction to events to take place in Canada.

R.S.C., c. 159, s. 9, provides that every one who becomes the custodian or depositary of any money, property, or valuable thing staked, wagered, or pledged upon the result of any political or municipal election, or of any race, or of any contest or trial of skill or endurance of man or beast, is guilty of a misdemeanour.

Held, that this enactment should not be construed as extending to the result of any election, race, contest, etc., to take place outside of the Dominion of Canada.

Wells v. Porter, 3 Scott 141, followed.

J. R. Cartwright, Q.C., for the Crown.

Osler, Q.C., and *W. G. Murdoch* for the prisoner.