and, so far at least as refiling chattel mortgages or bills of sale of chattels, they appear to me to be wholly prospective. The 8th section is in its express terms confined to every mortgage (or copy thereof) "filed in pursuance of *this act*," and it declares such mortgage shall cease to be valid unless there be a refiling, in manner prescribed.

There is a broad generality in this language of the first section, which may be and possibly was intended to cover all chattel mortgages executed before the passing of that statute, which had not been filed under the provisions of the former act. But granting that such mortgages must, in order to their validity, be filed in compliance with this last enactment, this case will not come within it, for the mortgage in question was filed under the 12 Vic.

The result, then, is that the last act wholly repeals the 12 Vic. cap. 74, and makes no provision for refiling mortgages already filed in accordance with its provisions. Their validity must for the future depend on the rules and principles of the common law, and the mortgage in question is only impeached on the ground of the necessity of refiling.

The second objection calls for no remark: it was properly treated by Mr. Wilson as without the support of any authority.

Nor can I say that I have any doubt as to the third. It would have been a misappropriation of the funds raised by the issue and sale of these preferential bonds, and a fraud upon the lien of the province, if the Grand Trunk Railway Company had, without the sanction of the legislature, loaned or given any part of such funds to aid other railway companies in the construction of their lines. It was necessary, therefore, that they should have authority to employ a part of their funds for such purposes, and the legislature seem to have employed language capable of a construction stronger than that of a mere permission so to appropriate £100,000. But when, in an act passed, as the title expresses it, "to grant additional aid," or, as it is set forth in the preamble, "to grant facilities in aid" of the Grand Trunk Railway, "for objects and under conditions hereinafter mentioned," the aid is only that of enabling them to borrow money on their own bonds, which bonds are to be preferred, in order of payment, to the claim of the province. It is, I think, too much to contend that the words "to enable the company to assist the Prescott railway as a subsidiary line," necessarily means to *give* and not to *loan* money to the latter company. If it be *aid* to the one company to enable them to borrow, it must, I think, be *assistance* to the other to give them a right to call upon the Grand Trunk company to lend. In my opinion, neither of the objections is sustainable, and the rule must be discharged.

CHAMBERS.

COMMERCIAL PERMANENT BUILDING SOCIETY. v. ROWELL AND BOXALL.

Ejectment—Appearance and notice of claim—Costs.

A notice of claim under the statute may at the same time deny the title of the plaintiffs and shew in what respect it is defective.

This was an action of ejectment and the plaintiff's by this application, called upon the defendants to shew cause why the appearance and notice of claim filed in this cause, should not be set aside with costs on the following grounds:

1st. That the appearance had no date, which objection was afterwards waived.

2nd. That the defendants claimed under two titles.

3rd. That the defendants asserted title to be in one French, and did not claim through him but claimed under one Catharine Drummond.

4th. That defendants thereby set up two distinct titles to the property.

The notice of claim was in the words following, that is to say:

Take notice that the defendant Joseph Rowell denies the alleged title of the plaintiffs to the property mentioned in the writ of summons issued in this cause, inasmuch as the mortgage under which the plaintiffs claim is void, and the legal estate in the property in question is outstanding and vested in one James French, under a certain mortgage, executed by the defendant Joseph Rowell, to the said James French, on the 3rd day of June, A.D 1850. And further take notice that the defendant Joseph Rowell, claims title to the said property under and by virtue of a certain indenture of lease made by one Catharine Drummond, to the said Joseph Rowell; and also take notice that the defendant John Boxall, claims title to the possession of the said property, as tenant under the said defendant Joseph Rowell.

Dated, &c.,

The defendants contended that they set up but one title. That they only denied the title of the plaintiffs, and shewed why they did so, i.e., because the mortgage under which they claim is subject to a prior mortgage given to one French, and that they claimed as tenants under Catharine Drummond?

RICHARDS, J.—Considered that the defendants while shewing their own claim had a right to deny the title of the plaintiffs, and to shew why they did so, and that that was all that was done in this notice.

He said, as the plaintiffs had made this application with costs he must dismiss it with costs.

Summons discharged with costs.

CHANCERY.

(Reported by THOMAS HODGINS, Esq., LL.B., Barrister-at-Law.)

SCHOOL TRUSTEES v. FARRELL.

Mistake—School property—Volunteers—Municipal Councils—Preparation of Deeds.

A school site had been granted to certain parties, in 1831, and a school house erected thereon; but, by mistake, the wrong site was conveyed. The grantor subsequently made a mortgage on his estate, but exempted the portion reserved for a school site. He died shortly afterwards, leaving his son and heir-at-law, a minor. The defendant, during the minority of the heir, obtained a lease of the premises, excepting the site in question; but, on the coming of age of the heir, obtained a deed from the said heir, without any reservation of the school site, About the same time, or a little before, he also obtained an assignment of the mortgage, so as to perfect his title. He then claimed the land on which the school-house was erected, on the ground that, in consequence of the mistake, no title was vested in the trustees;—whereupon the trustees of the school section filed a bill against him, and it was

Held, that he had express notice of the trustees' title; and that even if the trustees were volunteers as to this piece of land, the defendant was also a volunteer; and being prior to him, they had a right to the aid of equity to have his title to said piece of land cancelled, or a conveyance thereof from said defendant.

Held also, that the Township Council was a necessary party to the suit.

Held further, that it was the duty of the defendant to prepare the proper deeds of the lot, so as to have the mistake rectified.

In this case the amended bill was filed by the trustees of school section No. 4, in the township of West Gwillimbury, against one John Farrell, Richard Callaghan, and the Municipality of the Township of West Gwillimbury.

The bill, after reciting the act 56 Geo. III. cap. 36, which enacted that the inhabitants of any township or place might meet together and make arrangements for common schools in such township or place, and elect three trustees to manage the same, stated that the inhabitants of the townships of West Gwillimbury and Tecumseth did so meet together, on or about the 12th June 1831, and elected three trustees; that about the same time one Thomas Machell, since deceased, conveyed the said trustees a certain lot of land for said school, but that, owing to a mistake in the description thereof, the lot was described as commencing at the "north east" instead of the "south west" angle of said Machell's property; that the trustees took possession of the lot at the *south west* angle, and built a school-house thereon, during the lifetime and with the consent of said Machell; that in 1835 said Machell gave a mortgage on his property to one William Pegg, but expressly reserved the school lot, according to its correct description, and in the same year died intestate, leaving his eldest son and heir-at-law, Andrew Machell, him surviving; that shortly afterwards (in 1836) the defendant Farrell obtained a lease of said property from the widow, reserving the lot in question; that the school-house had been and was then used; that said Farrell had express notice of said trustees' title; that in 1849, on the coming of age of said Andrew Machell, said Farrell obtained a deed from him, without any reservation of the said school lot, and also obtained an assignment from Pegg of his mortgage on the land; and that under the deed Farrell claimed the school lot, insisting that the trustees had no title thereto. The bill then prayed that the mistake in the deed of 1831 might be rectified, and that Farrell might be decreed to convey to them the lot which was intended to be conveyed to the trustees by the elder Machell.