

Killam, J.]

MERCHANTS BANK v. MCKENZIE.

[Oct. 3.

*Fraudulent conveyance—Voluntary settlement—Statute of limitations—Evidence of parties to impeached transaction.*

The plaintiffs brought this action to have it declared that certain lands held by the defendant McKenzie, and for which she had certificates of title under The Real Property Act, were held by her as trustee for the defendant McLean, against whom the plaintiffs had a registered judgment, or were transferred to her in fraud of McLean's creditors, and to enforce the judgment against the lands. These lands were vested in McLean in the year 1885, but were in that year sold for taxes to certain parties from whom the defendant McLean afterwards negotiated purchases of their rights under the tax sale certificates in the name of the defendant McKenzie, his niece, who kept house for him, and who had no money of her own. It was sought to be shown at the trial that McLean owed Miss McKenzie for wages about as much money as was required for the purchases, and had taken this way of paying off his indebtedness to her. It was not distinctly proved, however, that this had been done in consequence of any bargain or arrangement as to the matter, and McLean provided a considerable further amount to get the deeds from the municipality at the expiration of the time for redemption, after which certificates of title were procured for the lands in the name of Miss McKenzie.

*Held*, following *Barrack v. McCullough*, 13 K. & J. 117, and *Harris v. Rankin*, 4 M.R. 115, that the onus was upon Miss McKenzie to account for her possession of the money she claimed to have had and to have advanced in the purchases, and for the source from which the balance of the purchase money was derived, and that in the absence of satisfactory evidence upon these points, the Court should treat the purchases as made by McLean, and with his own money.

No evidence was given at the trial of any agreement that the land should be taken by Miss McKenzie for her claim, or in part payment, or as security for it, or that the purchase price furnished by McLean should be credited on account, and whether the transaction should be considered as one of voluntary settlement upon Miss McKenzie, or of a trust in McLean's favor; it was void against creditors, and the certificates of title in the name of Miss McKenzie could not stand in the way of granting relief to the plaintiffs.

*Held*, also, that the plaintiffs were not barred by the Statute of limitations, as the case should be treated as one of concealed fraud, and the fraud was not discovered, and could not by the exercise of reasonable diligence have been discovered, more than ten years before the commencement of the action. Judgment declaring that the plaintiffs are entitled to a lien upon the lands for the amount of their judgment, interest and costs, and to a sale of the property.

*Tupper, Q.C., and Phippen*, for plaintiffs. *Ewart, Q.C., and McPherson*, for defendants.

Bain, J.]

LOPPKY v. HOFLEY.

[Oct. 7.

*County Court—Jurisdiction of—Prohibition—Unsettled account.*

This was an application for prohibition to a County Court, under the fol-