

the homestead cannot be prejudiced by the fraudulent acts of the husband, in which she did not participate.

*Homestead a Joint Tenancy.*—In the homestead estate most of the unities of a joint tenancy are to be found. The main difference between a homestead tenancy and a joint tenancy at common law is, the want of power in one of the parties in the case of the homestead to sever the tenancy.—*Manvill Barber and Julia A. Barber his wife v. Frederick Babel and Sophia Babel his wife*, Pitt. Leg. Journal, Sept. 27, 1869.

## ONTARIO REPORTS.

### COMMON LAW CHAMBERS.

(Reported by HENRY O'BRIEN, Esq., Barrister-at-Law.)

#### HOLMES v. REEVE.

*Certiorari to remove case from Division Court.*

*Held*, 1. The mere fact that a judge of a Division Court has expressed an erroneous opinion in a case before him, is no ground for its removal by *certiorari*.

2. Where a defendant knows all the facts of a case before the day of trial, but, nevertheless, argues the case and obtains an opinion from the judge, the case should not be removed, and the fact that the judge is desirous that the case should be disposed of in the superior court, can make no difference.

[Chambers, March 15, 1869.]

This was an action brought on a promissory note for sixty-eight dollars, made by the defendant, and was placed in suit in the third Division Court of the County of Huron, and the summons was served for the court to be held on 25th January, 1869.

The defendant obtained a summons for a writ of *certiorari* to remove the case from the said Division Court into the Court of Common Pleas, on the ground that difficult questions of law were likely to arise.

One of the affidavits upon which the summons for the *certiorari* was granted was made by Mr. Sinclair, attorney for the defendant, and was as follows: "That the said judge reserved his judgment on said evidence and the points raised, from the twenty-fifth day of January last until the sixth February, instant, and from then until the thirteenth day of February, instant, when I attended before him, and he expressed a desire to have a short time longer for consideration, and he suggested the eighteenth day of February instant, as the day he would be prepared to give his judgment: that on said last mentioned day I attended before the said judge, and Mr. Elwood appeared for the plaintiff, when the judge of said Division Court expressed his opinion adversely to the defendant: that he did so with great hesitation, as he expressed it, on the ground that the decisions bearing on the point appeared contradictory: that I suggested to the said judge the propriety of delaying his delivery of judgment until I had an opportunity of applying for a *certiorari* to remove the case to one of the superior courts of law, the case being one of great importance to the defendant, and one involving some questions of law, which had not then come up for decision in any of the superior courts of law in the manner raised by the facts of this case:

that the said learned judge remarked that he certainly thought it a fit case to be removed by *certiorari*, and would grant time to enable me to apply therefor, and postponed the delivery of judgment until the fourth day of March next, for the purpose of such application."

The plaintiff's attorney, in his affidavit filed on shewing cause, swore, "That on the return of the said summons (in the Division Court) the said John Reeve appeared, and also the said Richard Holmes: that James Shaw Sinclair, of the said town of Goderich, Esquire, appeared as counsel for the said John Reeve, and I, this deponent, appeared as counsel for the said Richard Holmes: that the said cause was duly called on for hearing on that day before Seeker Brough, Esq., judge of the County Court of the County of Huron, who is also the judge of the said third Division Court: that after the said case had been thoroughly gone into, and after several witnesses were examined, both on behalf of the said Richard Holmes and the said John Reeve, and after a lengthy legal argument had taken place, and when the said judge had expressed his opinion that his judgment would be for the said Richard Holmes, and just as he was about to endorse his said judgment on the said summons, the said James Shaw Sinclair got up, and asked, and pressed on the said judge, that if he would not then enter his judgment, but would defer the same to some future day, he could produce to him authority to shew that in law he was entitled to his judgment: that the said judge in pursuance of the said request, adjourned the said cause until the sixth day of February: that on that day the said Mr. Sinclair, on behalf of the said John Reeve, and John Y. Elwood, of the said town of Goderich, barrister-at-law, my partner, on behalf of the said Richard Holmes, appeared before the said judge, and further argued the said case: that after hearing the said argument, the said judge informed the said parties that he would be prepared to give his judgment on the thirteenth day of February: that on that day the said Sinclair and Elwood appeared before the said judge to hear his said judgment, but he, not being prepared to give it then, said he would give the same on the eighteenth day of February."

It also appeared from another affidavit, that on the 18th February, the learned judge said he was then prepared to deliver his judgment, and then proceeded to deliver and did deliver the same; and said that "in his opinion the plaintiff Richard Holmes was entitled to his judgment," and then proceeded to give and did give his grounds for said judgment, and reviewed the authorities cited to him on the said argument: that after the said judge had delivered his said judgment, Mr. Sinclair, on behalf of the said John Reeve, applied to and urged upon the said judge not to endorse his judgment on the back of the said summons, but to refrain from doing so until the fourth day of March, instant, as in the meantime he would apply for a writ of *certiorari* to remove the said plaintiff.

Spencer shewed cause, and contended that the application was made too late, the case having been considered by the judge of the court below, and that judgment was in effect given, though not formally entered: *Black v. Wesley*, 8 U. C. L. J. 277; *Gallagher v. Bathie*, 2 U. C. L. J. N. S. 73.