

Q.B.]

NOTES OF CASES.

[Q.B.]

McDOUGALL V. CAMPBELL.

Counsel fees—Right of action for—Bill for divorce and alimony.

Held, (Harrison, C. J., dissenting), that counsel in this Province have the right to maintain an action for their fees.

Defendant having presented a bill to the Senate for a divorce from his wife, the plaintiff was retained by the wife as counsel before the committee of the Senate to oppose the bill. The defendant being informed that he must pay from day to day into the committee the costs of his wife's defence, promised the plaintiff that if plaintiff would not insist on defendant so paying these fees, he would pay them to the plaintiff when taxed. The committee having reported the preamble of the bill not proved, the wife applied to the Senate for a divorce and for maintenance, and retained the plaintiff to support such application.

Per WILSON, J.—(1.) The Senate could have no power to award alimony, and the plaintiff could not recover for his fees in promoting a bill for that purpose. (2.) If counsel fees could not be recovered by a counsel from his client, the plaintiff here could not recover upon this express contract. (3.) The Court upon such express agreement, set out in the judgment, sufficiently shewed a right of action in the plaintiff against the defendant.

Spencer, (J. Macdougall with him), for plaintiff.

Bethune, Q.C., contra.

EASTER VACATION.

CASPAR V. KEACHIE.

Reviving judgment over 10 years old—Statute of Limitations.

Oct. 25.]

[WILSON, J.]

A judgment over 10 years old, which has not been acted on within that time, and on which no payments have been made, cannot be revived since the late Statute of Limitations of Ontario. In this case the defendant did not oppose a motion to revive in chambers, and took no steps to set the order aside for several months when execution was about to be enforced. The Judge refused to set the order to revive aside, owing to the conduct and delay of the defendant.

Nugent, for plaintiff.

G. B. Gordon, for defendant.

MICHAELMAS TERM, November 19.

PATTERSON V. SMITH.

Lease—Estate for life—Denying lessor's title.

H., who had a life estate in certain lands, leased it for his life to defendant, one A. P., husband of plaintiff, claiming it as reversioner of H., sold the land and lease, etc., to one S., who sold to plaintiff. Plaintiff also bought the land at a sheriff's sale under an execution against A. P., at defendant's suit, in an action for 6 years rent. *Held*, that defendant might shew that his lessor's title ceased with his death, and that he was relieved from the estoppel which bound him during the lessor's life time.

Armour, Q.C., for plaintiff.

Robinson, Q.C., contra.

MARSHALL V. JAMIESON.

Contract to deliver wheat—Failure to find cars.

Action for damages for non-delivery of wheat to plaintiff, purchased by him from defendant.

Held, that the letters and telegrams in this case shewed a completed contract.

Held, also, that the rule which applies to sales, f. o. b., on vessels, applies also to shipments, f. o. b., by rail, and that it is the duty of a vendee buying, f. o. b., to furnish the cars.

Held, also, in this case there was no sufficient evidence of a local custom making it the seller's duty to supply the cars; and

Quere, how far such a local custom would be allowed to prevail against the general rule.

Osler, for plaintiff.

C. Robinson, Q.C., for defendant.

BARTELS V. BARTELS.

Will, construction of—Estate for life.

J. B. devised his land, including the homestead, in fee to his sons, "subject to the following conditions, that my beloved daughters . . . shall have at all times a privilege of living on the homestead and maintained out of the proceeds of the said estate during their natural lives."

Held, that the words, "shall have at all times a privilege of living on the homestead," etc., gave the whole homestead to the daughters as a home during their lives; and that the words, "shall be maintained out of the said estate," meant all the estate, real and personal, mentioned in a former part of the will and not the homestead merely.

Reeve, for plaintiff.

Wallbridge, Q.C., for defendant.