

order had been taken with costs, and, stating that this was a mistake, and that he did not intend to allow costs, he directed the prothonotary to produce the order, and caused the portion of it relating to costs to be erased.

*Held*, that the judge had power to make the correction ordered.

*Held*, also, that counsel for plaintiff could not get rid of the order as corrected by refusing to accept it, but must appeal.

*Held*, also, that the functions of the prothonotary being purely ministerial, he was not justified in treating the corrected order as abortive, and in neglecting to file it.

*D. A. Hearn*, for plaintiff.

*D. A. Cameron*, for defendant.

Full Court.]

THE QUEEN v. GAIN.

[May 8.]

*Canada Temperance Act, s. 117—Powers of Court to amend conviction limited by—Word "penalty" held to include imprisonment under Code, s. 372—Imprisonment for first offence—Where awarded for a period possibly more than three calendar months held bad.*

Sec. 117 of the Canada Temperance Act limits the powers by virtue of which the Court is enabled to amend or ignore defects in convictions as follows: "If no greater penalty is imposed than is authorized."

*Held*, that the word "penalty" as used in the words quoted, includes imprisonment awarded under the Code, s. 372, as an alternative punishment under the Canada Temperance Act.

*Held*, further, that a conviction for a first offence under the Act which provided for imprisonment for 90 days in default of payment of the fine imposed, or of a sufficient distress, 90 days being possibly more than three calendar months, was bad, and could not be amended.

*A. Drysdale, Q.C.*, for appellant.

*W. B. A. Ritchie, Q.C.*, for respondent.

Full Court.]

WENTZELL ET AL. v. ROSS ET AL.

[May 8.]

*Real estate—Rescission of agreement for purchase—Estoppel—Damages.*

Plaintiffs went into possession of land under a written agreement under seal to purchase from defendants. A portion of the purchase money was paid on the completion of the agreement, and the balance was to be paid on the delivery of the deed. An action of trespass was brought against plaintiffs by D., who was in possession of the land at the time, having gone into possession under a prior agreement of a somewhat similar character. On the trial of the latter action an agreement was entered into in open Court, under which plaintiffs agreed to relinquish their claim to the land on being repaid the amount of their deposit with interest, and defendants agreed to convey the land to D.

*Held*, that plaintiffs, having become parties to this agreement, were estopped from making any claim for damages against defendants, on account