same position as C., dismissing action with costs.

Held, right, and that plaintiff was bound by the verbal agreement.

A. C. Galt, for motion.

W. Nesbitt, contra.

Div. Court.]

REGINA v. DUNNING.

Weights and Measures Act—Crime—Evidence of defendant—Imprisonment—Jurisdiction—Certiorari Conviction bad in part.

Defendant was convicted by two justices under Weights and Measures Act (42 Vict. ch. 16, s. 41, ss. 2 [D.]), as amended by 47 Vict. ch. 36, s. 7 (D.), of obstructing an inspector in discharge of duty, and fined $100 and costs, to be levied by distress, imprisonment for three months being awarded in default of distress. At the hearing defendant tendered his own evidence, which was rejected, when he appealed to the General Sessions, again tendering himself as a witness, but with same result, and the conviction was affirmed. On motion for certiorari,

Held, that conviction being affirmed on appeal, certiorari was taken away, except for want or excess of jurisdiction, neither of which existed, as the justices and General Sessions had jurisdiction to determine whether defendant's evidence was admissible or not, and their judgment, even if wrong, could not be reviewed by certiorari.

Per ARMOUR, J.—That even if they could be reviewed, the justices were right, as the offence charged was a crime.

Held, also, ARMOUR, J., dissenting, that imprisonment was justified in default of distress, by 32 & 33 Vict. ch. 31, s. 62 (D.), incorporated in Weights and Measures Act, by s. 53 thereof; but that if imprisonment were not so justified the whole conviction would be bad, there being no power to amend by striking out the award of imprisonment.

Per ARMOUR, J.—That 32 & 33 Vict. ch. 31, s. 62 (D.) should only be construed as fixing the duration of the term of imprisonment where the special Act provides specifically for some imprisonment without fixing its duration; and that as no imprisonment is expressly imposed by the Weights and Measures Act for the offence charged here, so much of conviction as awarded imprisonment was *ultra vires*, and therefore bad; but that it was separable from the residue of the conviction, and should be quashed, the residue standing.

Shepley (*McDougall* with him), for motion.

Clement, contra.

Div. Court.]

SHAW v. ONTARIO COTTON MILLS CO.

Master and servant—Negligence—Injury to workman—47 Vict. c. 39, s. 15, ss. 1 (O.)—49 Vict. 28, s. 3, ss. 1 (O.)

In defendants' dyehouse were a number of vats for boiling cotton. While employed in defendants' factory plaintiff had to stand on top of one of the vats, the covering of which was some boards. Plaintiff, about 3rd Dec., 1886, complained to the foreman of the insufficient number of boards for the purpose, but without effect, and on 6th of same month a board on which he was standing slipped, and he was thrown into the boiling liquid. Then defendants remedied the defect. A similar accident had occurred two years before.

Held, setting aside a nonsuit at the trial, that there was evidence enough of negligence on defendants' part in not guarding the vat, under 47 Vict. ch. 39, s. 15, ss. 1, the Ontario Factory Act, to have justified the jury in finding for plaintiff, and that apart from the Factory Act plaintiff could have sued under 49 Vict. ch. 28, s. 3, ss. 1, the Workmen's Compensation for Injuries Act; and that the maxim *Volenti non fit injuria* did not apply to this case.

Staunton, for motion.

Mackelcan, Q.C., contra.

Div. Court.]

STANDARD BANK v. DUNHAM.

Promissory note—Partnership—Liability of retiring partner for note signed in firm name after dissolution.

D. carried on business at M. from Feb., 1886, to 1st September, 1886, under style of D. & Co. He also did so at T. with P. from