

Q. B.]

NOTES OF CASES.

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QUEEN'S BENCH.

HILARY TERM, 1881.

THE QUEEN V. HOODLESS.

Recognizance—Irregularity.

In a recognizance taken before a Police magistrate pursuant to 32-33 Vict., cap. 30, sec. 44, following the form given in schedule (Q2) to the Act, the words "to owe" were omitted in the printed form which was used.

Held, that the omission was fatal and an action brought upon the same as a recognizance could not be maintained.

Osler, Q. C., for the crown.

Richards, Q. C., for defendant.

SMITH V. FAUGHT.

Ejectment—Will—Restraint upon alienation.

Held, that the direction in a devise in fee simple to A. F. F. by her father that she should "not sell or cause to be sold the above named lot or any part thereof during her natural life, but she shall be at liberty to grant it to any of her children whom she shall think proper," was a valid restraint upon alienation.

Held, also, that the giving of a mortgage by the devisee was not a violation of the restraint, and that the plaintiff, who was mortgagee, was entitled to recover, his mortgage being in default, as against the devisee's son, who claimed by statutory deed from his mother subsequent to the mortgage.

Delamere, for plaintiff.

J. K. Kerr, Q. C., for defendant.

GRIFFIN V. PATTERSON.

Husband and wife—Separate estate—Tenants by entireties.

Action for the price of household goods supplied in 1877 by plaintiff to the female defendant, who was married in 1856 without a marriage settlement and who resided with her husband and family. The husband and wife were seised by entireties under a devise made in 1866. In 1874 the sheriff affected to sell the

husband's interest under an execution to the wife.

Held, that the wife's interest in the real estate was not of such a quality as to entitle the plaintiff to a remedy against it.

Held, also, (ARMOUR, J., dissenting), that she was not liable to the plaintiff for the goods supplied.

Per HAGARTY, C. J. The fact that a married woman living with her husband and family orders household goods, raises no implied promise to pay or to bind her separate estate or any presumption save that she acts as her husband's agent.

The interest of the husband being inalienable was not saleable under execution pursuant to R. S. O., cap 66, sec. 39.

Per ARMOUR, J. (1) That whatever might be the effect of the sheriff's sale it should be treated according to the effect ascribed to it by the plaintiff and female defendant by their conduct, viz., as having vested the estate in her.

(2) That there should be a new trial to ascertain whether the plaintiff's claim was the debt of the wife incurred by her in respect of any employment or business in which she was engaged in her own behalf, or whether it arose by virtue of her own contract or was her separate debt. But from the evidence as it stood, it appeared a fair inference that the claim was the separate debt of the wife, part of it being incurred by her in respect of the business of farming in which she appeared to be engaged on her own behalf; that she had contracted in respect of separate personal estate appearing to be hers, and that the name of the husband should be struck out and a verdict entered for the amount against the wife.

Quere, as to the effect of the Married Woman's Acts upon an estate by entireties.

Beck, for plaintiff.

Edmison, for defendants.

COOPER V. HAMILTON.

Ejectment—Statutes of limitation.

John C., being owner in fee of the land in question, some time after 1854 placed his brother James C., in possession to occupy the same rent free. In 1867, defendant having married a