

granted. The earliest possible way of communicating with the defendants was by mail, reaching Manitoulin Island on Nov. 1. The sale sought to be restrained was advertised for Oct. 31st. The defendants, notwithstanding the service of the writ and notice of motion, proceeded with the sale.

Held, that they were guilty of contempt in so doing, and must pay all costs, and it was no excuse for them to say that if they had not sold on October 31st they could not have done so till June of the following year, nor had the merits of the action anything to do with the matter.

Johnston, Q.C., for plaintiff.

W. M. Douglas for defendants.

FERGUSON, J.]

[April 16.]

MEARNS *v.* ANCIENT ORDER OF UNITED
WORKMEN ET AL.

Life insurance—Benevolent society—Certificate payable to "legal heirs"—Effect of, between their children and subsequent wife.

A widower, having two children, insured in a benevolent society and took out his certificate payable "to his legal heirs," and subsequently married a second time. At the time of his death he left his wife surviving, but no other children than the two by the first wife.

Held, that the two children took the whole fund payable under the certificate to the exclusion of the wife.

Totten, Q.C., for the wife.

E. T. Malone for the guardians of the infants.

BOYD, C.]

[April, 27.]

BANNAN *v.* CITY OF TORONTO.

Municipal corporations—Vicuallling houses—By-law to forfeit license invalid.

The power given to municipal corporations under s. 285 of R.S.O., c. 184, to "determine the time during which vicuallling licenses shall be in force," does not confer any power to forfeit such licenses, but merely to fix the duration of the license.

The power to create a forfeiture of property is one which must be expressly given to a corporation by parliament, and such an extraordinary power is least of all to be inferred when parliament has provided other means of enforcing by-laws by means of fine and amercement, as in this case.

Practice.

Div'l Court.]

[March 29]

FRENCH *v.* LAKE SUPERIOR MINERAL CO.

Sheriff—Poundage—Fi. fa. lands—Sale.

A sheriff cannot have poundage under a writ of *fi. fa.* lands until there has been a sale of lands under the writ.

Merchants Bank v. Campbell, 32 C.P. 170, followed.

Although in matters of practice the decisions of one court are not binding upon others of co-ordinate jurisdiction, yet where the practice has become well settled by decisions, those decisions, should be followed.

Bissicks v. Bath Colliery Co., 2 Ex.D. 459 specially referred to.

D. W. Saunders for the sheriff of Thunder Bay.

Douglas Armour for the defendants.

MACMAHON, J.]

[April 2.]

DOUGLAS *v.* BLACKKEY.

Bond—Surety—Affidavit of justification—Cross-examination—Partnership.

A surety on a bond who is a member of a mercantile partnership, but justifies on his own individual property, not on his share in the partnership, is not compellable, upon cross-examination on his affidavit of justification, to disclose the liabilities of the partnership.

J. J. Warren for the plaintiff.

Alan Cassels for the defendants.