

N.S.] ZWICKER v. ZWICKER. [June 5.

*Deed—Delivery—Retention by grantor—Presumption—Rebuttal.*

The fact that a deed, after it has been signed and sealed by the grantor, is retained in the latter's possession is not sufficient evidence that it was never so delivered as to take effect as a duly executed instrument.

The evidence in favor of the due execution of such a deed is not rebutted by the facts that it comprised all the grantor's property, and that, while it professed to dispose of such property immediately, the grantor retained the possession and enjoyment of it until his death.

Judgment of Supreme Court of Nova Scotia (31 N.S. Rep. 333) reversed. Appeal allowed with costs.

*W. B. A. Ritchie*, Q.C., and *McLean*, Q.C., for appellant. *Wade*, Q.C., for respondent.

B.C.] ARCHIBALD v. McNERHANIE. [June 5

*Contract—Partnership—Dealing in land—Statute of frauds—British Columbia Mineral Act.*

Secs. 50 and 51 of the Mineral Act of 1896 (B.C.) which prohibit any person dealing in a mineral claim who does not hold a free miner's certificate does not prevent a partner in a claim not holding a certificate from recovering his share of the proceeds of a sale thereof by his co-partner.

A partnership may be formed by a parol agreement, notwithstanding it is to deal in land, the Statute of Frauds not applying to such a case. Judgment of the Supreme Court of British Columbia (6 B.C. Rep. 260) affirmed, Gwynne and Sedgewick, JJ., dissenting.

*Robinson*, Q.C., for appellant. *S. H. Blake*, Q.C., and *Latchford*, for respondent.

N.S.] WILLIAMS v. BARTLING. [June 5.

*Negligence—Matters of fact—Finding of jury.*

W. was working on a vessel in port, when a boom had to be taken out of the crutch in which it rested and he pointed out to the master that this could not be done until the rigging supporting it, which had been removed, was replaced, which the master undertook to do. When the boom was taken out it fell to the deck and W. was injured. In an action against the owners for damages the jury found that the fall of the boom was owing to the said rigging not being secured, but that this was not occasioned by the negligence of the owners or their servants.

*Held*, affirming the Judgment of the Supreme Court of Nova Scotia (30 N.S. Rep. 548) Gwynne, J., dissenting, that the first part of the finding did not necessarily mean that the rigging had never been secured, or that, if secured originally, it had become insecure by negligence of defendants,