

Q.B. Div.]

NOTES OF CANADIAN CASES.

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A foreign commission opened between the parties before trial cannot be objected to at trial because of any defect in the manner of execution.

Osler, Q.C., and Meek, for plaintiff.
MacLennan, Q.C., and Proctor, contra.

GILES V. MORROW.

Dower—Report of Commissioners—Time for moving against.

A motion within first four days of Michaelmas Sittings against the report in action of dower filed 29th May previously, *held*, too late.

McPhillipps, for motion.

T. G. Blackstock, contra.

RICE V. GUNN.

Principal and agent—Gambling contract—"Options"—"Differences"—Onus of proof—Proof of foreign law.

Defendants, Toronto merchants, engaged plaintiffs, Chicago brokers, to buy and sell grain in Chicago on margin, which the latter did, advancing them money, for which they sued, defendants having refused to settle for losses sustained.

Held, reversing the judgment of PATTERSON, J.A., that, assuming the State law to be that if the contract was to deal in such a way that only the differences in prices should be settled according to the rise and fall of the market, and no grain be either delivered or accepted, the contract would be a gambling contract and illegal; it lay upon defendants to establish clearly that such was the character of the dealing; and this defence not having been clearly proved, judgment was given for the plaintiffs.

After judgment at the trial, but before the argument in *banc*, the defendants put in a report of a case, bearing upon the question, decided in the Supreme Court of the U. S., verified by affidavit; *held*, admissible.

Where the opinions of experts on foreign law are conflicting, the Court will examine for itself the decisions and text-books of the foreign country, in order to arrive at a satisfactory conclusion.

KERR V. CANADIAN BANK OF COMMERCE.

Assignment for creditors—Validity of—Trusts to pay partnership debts only—Power to pay off liens in full—Change of possession.

W. and W. made an assignment of all their assets, both separate and partnership property, to the plaintiff in trust to realize and pay "all the just debts of the said creditors of the said debtors rateably and proportionably, and without preference or priority." There was a proviso that the trustee might pay any creditor in full whose debt constituted a lien on any part of the assets, whenever he deemed it advisable so to do. It appeared that one of the partner's had no property, and owed but \$110; that the other had some household furniture which was seized for rent, which it satisfied; that he owed less than \$100 otherwise; and that all these separate debts had been satisfied.

Held, CAMERON, J., dissenting, that the assignment was not void in providing for payment of partnership creditors only.

Held, also, that the provision that the trustee might pay off any lien or charge on the assets, did not invalidate the assignment.

Held, also, that there was, under the facts stated, an actual and continued change of possession.

Moss, Q.C., and Lees, for motion.

J. K. Kerr, Q.C., contra.

Rose, J.] [Feb. 26.

IN RE HARDING AND WREN.

Arbitration—Costs.

When the submission or order of reference is silent as to costs, arbitrators have no power to adjudicate upon them, but each party must bear his own costs and half those of the award.

A direction as to the costs in such a case held severable from the rest of the award.

Holman, for motion.

Smith (St. Mary's), contra.

Rose, J.] [Feb. 26.

REGINA V. BERNARD.

Conviction—Prior conviction—Refusal to receive evidence of—Costs.

A warrant was issued by a magistrate for the apprehension of the defendant, who was