

affidavit, in which he was described as "of Halifax in the County—Professor in Dalhousie College."

4. The objection taken to the affidavit upon which the *capias* was issued, that it did not show that any writ of summons was issued at the time it was sworn to, could not be sustained, O. 44, R. 1, not requiring the affidavit upon which the order for arrest is based to contain such a statement.

E. P. Allison, for appellant. *W. E. Fulton*, for respondent.

Full Court.]

NAUGLER v. JENKINS.

[May 15.

Statute of limitations, R.S., c. 112, ss. 11 & 21—Judgment registered to bind lands—Acknowledgment in writing within twenty years—Execution—Estoppel.

In May, 1868, defendant recovered judgment against N. for \$253.68, of which a certificate was registered to bind real estate. In March, 1874, N. conveyed to his son, the plaintiff, a portion of the lands bound by the judgment, the conveyance being prepared by and delivered in defendant's presence. In 1889 N. died, having some years previously given defendant an acknowledgment in writing showing that the sum of \$182.30 was still due on the judgment. In 1898 defendant obtained an order for leave to issue execution, and issued execution under which the sheriff levied on the land conveyed to plaintiff. The principal contention for plaintiff was that all proceedings on the judgment were barred by the Statute of Limitations, R.S., c. 112, s. 11, more than twenty years having elapsed since the recovery of the judgment.

Held—1. The proceeding by the sheriff was not an entry to recover land or the rent thereof, and that s. 11 had therefore no application.

2. The proceeding being one to recover a sum of money secured by a judgment, in relation to which an acknowledgment in writing had been given within twenty years, came directly within the provisions of s. 21.

3. The part taken by defendant in connection with the drawing and delivery of the deed, at the request of C., did not constitute an estoppel.

F. B. Wade, Q.C., and *V. J. Paton*, for appellant. *J. A. McLean*, Q.C., for respondent.

Full Court.]

HART v. McMULLIN.

[May 15.

Millowner—Obligation to keep safely water stored up by dam—Counter-claim against lower proprietor for backing up water—Easement abandoned for seventeen years.

Plaintiff and defendant purchased their respective mill sites in November, 1892, at an auction sale, which took place under a power of sale contained in a mortgage given by the Nova Scotia Land and Manufacturing