

Que.] ASSOCIATION PHARMACEUTIQUE v. LIVERNOIS. [June 21.

Appeal—Action for penalties—Plea of unconstitutionality of act—Judgment on other grounds.

The Association Pharmaceutique sued L. for \$325, penalties for selling drugs without license. L. pleaded 1. General denial. 2. That Pharmacy Act was ultra vires. The action was dismissed by the Superior Court for want of proof of the illegal selling alleged and this was affirmed by the Court of Queen's Bench. On motion to quash an appeal to the Supreme Court,

Held, STRONG C. J. and GWYNNE, J. dissenting, that if the Court should find error in the judgment appealed from the question of ultra vires pleaded by L. would have to be dealt with and the case was therefore appealable under s. 29 (a) of the Supreme Court Act, though no appeal would lie if this plea were not on the record. Motion to quash refused with costs.

Fitzpatrick, Q.C., for the motion. *Lajoie*, contra.

Province of Ontario.

COURT OF APPEAL.

From Divisional Court.] EVES v. BOOTH. [June 29

Dower—Husband and wife—Separation deed.

A covenant in a separation deed by trustees on behalf of the wife, that the wife will whenever called upon release her dower in any lands which the husband may acquire, is a bar to a claim by her to dower in lands afterwards acquired by him. Judgment of a Divisional Court, 35 C.L.J. 449; 30 O.R. 689, affirmed.

George Wilkie and *J. E. Irving*, for appellant. *A. Hoskin*, Q.C., for respondent.

From Meredith, C.J.] [June 29.

HORSMAN v. CITY OF TORONTO.

Assessment and taxes—Distress—Change of ownership—Chattel mortgage—Purchase from mortgagee.

Goods purchased from the chattel mortgagee thereof are not "claimed by purchase, gift, transfer or assignment" from the mortgagor within the meaning of R.S.O. c. 224, s. 135, sub-s. 4 (b), so as to make them liable in the purchaser's hands to distress for taxes due by the mortgagor. Judgment of MEREDITH, C.J., 31 O.R. 301, ante p. 29, affirmed.

Fullerton, Q.C., for appellants. *Brewster*, Q.C., and *Heyd*, Q.C., for respondent.