

[Com. Pleas.]

NOTES OF CANADIAN CASES.

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contravening the provisions of R. S. O. ch. 10, sec. 125 in not delaying his return after receiving notice from the county judge of a recount of the ballots.

The learned judge at the trial held that the plaintiff was a person aggrieved within the meaning of sec. 181 of the act; that the defendant could not question the power of the county judge to give the appointment or issue the notice on the material before him, because the process of the Court or judge must be obeyed while it stands when as here there was jurisdiction, but he also held, which was affirmed by the full Court, CAMERON, C.J. *dubitante*, that this evidence did not show that the notice of the recount came to the knowledge of the defendant before he made his returns, and therefore he did not wilfully contravene the section; and the plaintiff therefore could not recover.

Per CAMERON, C.J. The doubt in his mind arose from the defendant not affirming by his oath that the fact of a recount did not come to his knowledge before he made his return.

Lount, Q. C., for the plaintiff.

Aylesworth, contra.

HUGHES V. HAND IN HAND ASSURANCE COMPANY.

Insurance—Reference to arbitration—Costs of arbitration and award—Construction of order.

After the action had been commenced on a policy of assurance containing the statutory conditions, the defendants gave notice of arbitration under the condition in that behalf, when the Court made the following order: "And the Counsel for the defendants agreeing thereto and abandoning all defence to this action and admitting their liability under the policy sued on, it is ordered that all proceedings in this action be stayed, the plaintiff to be at liberty to sign judgment and proceed in this action for amount as may be awarded to him by the arbitrator or arbitrators now or hereafter to be appointed between the parties under the policies of insurance sued on in this action, and the statutory condition therein in that behalf, together with the costs of this action, etc. And it is further ordered without the consent of the defendants that either

party be at liberty, after the making of said award, to apply to a judge in Chambers in respect of the payment of the costs of the reference and award."

On motion to ROSE, J., an order was made directing the defendants to pay the costs of the reference and award.

On appeal to the Divisional Court, CAMERON, C.J., was of opinion that the appeal should be allowed, and GALT, J., that it should be dismissed. The Court being equally divided the judgment was affirmed and appeal dismissed.

G. H. Watson, for the plaintiff.

Foster and J. B. Clarke, contra.

WARD V. HUGHES.

Assignment of chose on action—Absolute in form though interest retained by assignor—Action by whom—Failure of consideration—Evidence of.

An assignment of a mortgage on land was absolute in form, though as a matter of fact the assignors retained an interest in himself.

Held, ROSE, J., *dubitante* that an action on the covenant in the mortgage must be brought in the name of the assignee.

At the trial the learned judge dismissed the action on the ground that there was a total failure of consideration for the said mortgage. The Divisional Court was not satisfied that there had been such failure of consideration, and granted a new trial, with leave to have such parties added as might be deemed necessary.

George Bell, for the plaintiff.

The defendant in person contra.

PORTEOUS V. MUIR.

Promissory notes—Parol evidence—Suspension of time of payment.

To an action on a promissory note, payable on demand, the defendant set up a parol agreement whereby the payment of the note was to be suspended for two years; and *per* GALT, J., even if such evidence were admissible it showed that the agreement never came into effect, because one of the conditions upon which agreement was to take place was not complied with.