

He had first held that under the circumstances, the mortgages must be declared void as between the persons claiming under the will and the mortgagees.

As to the second point he said :—"For these reasons I think the mortgagees could have no claim to the deeds, even in equity, but I am rightly reminded that I am not administering equity only. The third paragraph of the prayer asks for delivery up of these deeds. If there could be any ground for the defendants urging a Court of Equity to leave the plaintiffs to their legal remedy as to the deeds, I am to give that legal remedy also. I must, therefore, order that the title deeds be delivered up."

[NOTE.—*The Imp. and Ont. enactments appear mut. mut. virtually identical.*]

THE HELENSLEA.

Imp. O. 11. r. 3—Ont. Rule No. 7—Writ of Summons.

A writ of summons will not be set aside, merely because the defendant has been falsely described therein as resident within the jurisdiction, whereas, in fact, he resided out of it.

[Jan. 24.—Adm. 51 L. J. N. S. 16.]

The application was to set aside a writ *in personam* in an action for collision.

SIR R. J. PHILLIMORE.—I cannot accede to this motion. The writ was not, it appears, issued with any intention of serving it out of the jurisdiction of the High Court; and when I look at the form of the writ, I find there is nothing on the face of it which can be said to make it invalid. There is no reason why the plaintiffs should not wait until the defendant comes within the territorial jurisdiction of the Court, though at the time when the writ was issued he was not resident in the city of London, and though he has been erroneously so described. The motion must be dismissed with costs.

[NOTE.—*The Imp. and Ont. rules appear virtually identical.*]

NOTES OF CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

SUPREME COURT.

From P. E. Island.] [March 28.]

HOLMAN V. GREEN.

Letters Patent under Great Seal, P. E. I., of foreshore in Summerside Harbour—B. N. A. Act, sec. 108—Public Harbours—25 Vict., ch. 19, P. E. I.

This was appeal from a judgment of the Supreme Court of Prince Edward Island, making absolute a rule for a non-suit, in an action of ejectment brought to recover a portion of the foreshore of Summerside Harbour. The plaintiff's title consisted of Letters Patent, under the Great Seal of Prince Edward Island, dated 30th August, 1877, by which the Crown, in right of the Island and assuming to act in exercise of authority conferred by a Provincial Statute, 25 Vict., ch. 19, purported to grant to the plaintiff, in fee simple, the land sought to be recovered in this action.

Held, that under section 108, B. N. A. Act, the solid bed of the foreshore in the Harbour of Summerside belongs to the Crown as representing the Dominion of Canada, and therefore the grant, under the Great Seal of Prince Edward Island, to plaintiff, is void and inoperative.

Davies, Q.C., for appellant.

Peters, for respondent.

Appeal dismissed with costs

From Nova Scotia.] [March 28.]

CREIGHTON V. CHITTICK ET AL.

Insolvent Act of 1877, sec. 144—Trader—Pleadings.

This was an appeal from a judgment of the Supreme Court of Nova Scotia, making the rule nisi, taken out by the respondents, absolute to set aside the verdict for plaintiff, and enter judgment for the defendants. This action was brought by the plaintiff, as assignee of L. P. Fairbanks, under the Insolvent Act of 1875, for several trespasses alleged to have been committed on the property known as the Shubernacadie Canal property, and for conversion,