

juries, the trial Judge did not see fit to enter any judgment on the findings of the jury, but left the parties to move the full Court as they might be advised. Both parties accordingly moved the full Court for judgment, the arguments being confined to the question of the liability of the defendant company.—*Held, per Walkem, Drake, and Irving, J.J.*, that the full Court is an appellate Court and has no jurisdiction to hear a motion for judgment on the findings of a jury referred to it by a trial Judge. *Per Martin, J.* (dissenting) that, as the question of jurisdiction was not raised by counsel nor by the Court, the case should be dealt with on its merits, and that judgment should be entered in favour of the defendant company. *McKelvey v. Le Roi Mining Co.*, 22 C. L. T. 42, 8 B. C. R. 288.

New point raised on appeal—Question of fact.—D., with others jointly indebted to plaintiff, on certain promissory notes in relation to transfer of a business as a going concern, did not, in his pleadings, nor at trial, until the close of evidence for both sides, raise the point that he claimed a lien on certain merchandise in stock which was sold by plaintiff, the proceeds of which ought to have been, but were not, applied in reduction of the debt.—*Held*, that where a point is one of fact, or of mixed law and fact, it cannot be raised in Court of Appeal for the first time unless the Court is satisfied that by no possibility could evidence have been given which would affect the decision upon it; but where the point is wholly one of law, such, for instance, as construction of statute, it may be raised for the first time on appeal, subject to such terms, if any, as the Court may see fit to impose. *Stone v. Rossland Ice and Fuel Co.* (1906), 12 B. C. R. 60, 3 W. L. R. 55.

Notice of appeal—Extension of time for—Waiver—Security for costs.—Court has no jurisdiction to extend time limited by s. 76 of B. C. Supreme Court Act, as amended by Acts of 1899, c. 20, for giving notice of appeal. Respondent by applying for security for costs of appeal does not waive his right to object that appeal was not brought in time. *Lung v. Lung*, 8 B. C. R. 423.

Notice of appeal—Particulars.—Points not argued, though included in notice of appeal, will be considered as abandoned. Grounds of appeal should be so particularized that the opposite party will know beforehand what he has to meet, and when "misdirection" is alleged, particulars should be stated. *Warrington v. Palmer*, 22 C. L. T. 126, 8 B. C. R. 344.

Notice of appeal—Sittings—Time.—Final judgment was pronounced and entered on 27th February; notice of appeal for January sitting of Full Court was given on 24th Oct. A sitting of Full Court commenced, according to the statute, on 3rd Nov.:—*Held*, that appeal was brought in time. *Traders National Bank of Spokane v. Ingram*, 24 C. L. T. 198, 10 B. C. R. 442.

Petition to cancel water record—Water Clauses Consolidation Act, s. 36—Re-trial—Viva voce examination of witnesses—Change of venue—Proper registry—Forum.—The right of appeal upon petition to cancel

a water record under s. 36 of the Water Consolidation Act is in effect a right to a re-trial before a Judge of the County Court or a Judge of the Supreme Court; and the appropriate method of dealing with questions of fact on that appeal is by examination and cross-examination of witnesses *viva voce*. *Ross v. Thompson*, 10 B. C. R. 177, followed. —There is jurisdiction to change the place of hearing of the appeal or trial; and an application may be heard at Victoria, although the petition was filed in the Vancouver registry. *Wallace v. Fleusin*, 11 B. C. R. 328, 2 W. L. R. 13.

Place of hearing—Notice of appeal—Striking out—Forum.—Under B. C. Supreme Court Act, as amended in 1902, an appeal in a Victoria case can be heard by Full Court sitting in Vancouver without consent. *Per Drake, J.*—A single Judge has jurisdiction to order a notice of appeal to Full Court to be struck out. *Raser v. McQuade* (No. 2), 11 B. C. R. 169.

Preliminary objection—Failure to set down.—Failure to set down an appeal is an irregularity only, within s. 83 of Supreme Court Act of B. C. No preliminary objection will be heard unless proper notice has been given under same section. *Baker v. Kilpatrick*, 7 B. C. R. 127.

Preliminary objection—Notice of.—Notice of a preliminary objection to an appeal to Full Court must be served at least one clear day before time set for beginning of sittings. *McGuire v. Miller*, 9 B. C. R. 1.

Preliminary objection—Mistake in appeal book.—An objection to the hearing of an appeal on the ground that appeal books are defective and erroneous is not a preliminary objection within s. 83 of Supreme Court Act of B. C. *Rogers v. Reed*, 20 C. L. T. 219, 7 B. C. R. 139.

Refusal to entertain—Interlocutory order—Action decided pending appeal—Costs.—An appeal from an interlocutory order, and, pending the appeal, the action had been tried and decided. Full Court ordered the appeal be struck off the list, refusing to accede to request of appellant's counsel, who wanted appeal to go on to decide question of costs. *Fawcett v. Can. Pac. Rte. Co.*, 22 C. L. T. 39, 8 B. C. R. 219.

Reversing findings of facts—Trial without jury—Commission evidence—Company—Contract—Ultra vires.—In action in Yukon for damages for breach of contract, tried without a jury, the evidence for defence being evidence taken on commission, the Judge held the contract sued on was made with defendant Co. and not with one Munn as alleged by defence, and gave judgment for plaintiffs.—*Held*, reversing the finding and allowing appeal, that the Judge had failed to appreciate the commission evidence. *Per Drake, J.*, that the question of *ultra vires*, not having been revised in the Court below, was not open on appeal. *McKay v. Victoria Yukon Trading Co.*, 22 C. L. T. 169, 9 B. C. R. 37.

Right of appeal—Award—Workmen's Compensation Act.—No appeal lies to B.