

Q. B. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

not provide any means for ascertaining or deciding any contest as to what deductions may properly be made from the proceeds of sale of the said seats, and that it is proper to refer this matter for enquiry to the Master.

Arnoldi, for motion.

Ritchie, Q.C., contra.

JORDAN V. DUNN.

Will—Construction—Conditions precedent and subsequent—Validity of.

Testator, after granting to his wife a life estate in certain land, devised the same to his son, subject to the following conditions:

First, that he abstain totally from intoxicating liquors and card playing; secondly, that he be kind and obedient to his mother; thirdly, that he be known among his friends as an industrious man ten years after the death of his mother.

Held, (1) that the three conditions were conditions precedent up to the time of the mother's death, and that conditions one and three were conditions subsequent for ten years after the mother's death.

(2) That either the use of intoxicating liquors or the playing of cards would be a breach of the first condition.

(3) That the first condition was not valid, and was too vague or indefinite for trial or adjudication by the court; and having been broken, the son's title failed in so far as the condition was precedent, and was forfeited in so far as the condition was subsequent.

Semble. That conditions two and three were valid, and not too vague or indefinite for trial or adjudication by the court.

Lash, Q.C., and *R. Cassels*, for motion.

Osler, Q.C., contra.

CHANCERY DIVISION.

Full Court.]

[March 5.]

REGINA V. FEE.

Canada Temperance Act, 1878, s. 123—Defendant compellable to answer—Criminating questions—Jurisdiction of Divisional Court.

This was a conviction under the Canada Temperance Act, 1878, whereby the plaintiff was adjudged to pay a fine for selling liquor unlawfully. Being brought up on *certiorari* before FERGUSON, J., sitting in court, it was quashed (no cause being shewn, and no one appearing to support the conviction) on the ground that the defendant had been obliged to give evidence of his own criminality. After the order to quash had been issued an application was made on the part of the Crown to open up the matter on the ground that instructions had been given to shew cause, but that through inadvertence default had happened. The judge was disposed to accede to the application (if there was jurisdiction to do so), and, with a view of having the whole matters in controversy investigated, sent the application to be disposed of by the Divisional Court.

Held, (1) That the right of rehearing which existed in matters of a criminal nature such as the present, before the Judicature Act, is not interfered with by that Act, and applied to the present case, and if there was jurisdiction to apply to a single judge to quash the conviction, there was jurisdiction in the Full Court to reconsider his decision.

(2) On the proper construction of the Canada Temperance Act, 1878, s. 123, a defendant is compellable when called as a witness to answer questions, even though tending to criminate himself.

Order quashing the conviction reversed.
No costs.

T. D. Delamere, for the Crown.

A. H. Marsh, for the defendant.