

Nova Scotia.]

[Nov. 10.]

KEARNEY v. OAKES.

Notice of action—Employer of railway department—Contractor for building government railway—Government Railway Act, 1881 (44 Vict., c. 25), s. 109.

Section 109 of the Government Railways' Act, 1881, provides that "No action shall be brought against any officer, employer, or servant of the Department" (of Railways and Canals) "for anything done by virtue of his office, service, or employment, unless within three months after the act committed, and upon one month's previous notice thereof in writing."

Held, reversing the judgment of the Supreme Court of Nova Scotia (20 N.S. Rep., 30), RITCHIE, C.J., and GWYNNE, J., dissenting, that a contractor with the Minister of Railways, as representing the Crown, for the construction of a branch to the Intercolonial Railway, is not an employee of the Department within the meaning of this section, and is not entitled to notice of an action to be brought for a trespass committed by him in the execution of his contract.

Appeal allowed with costs.

T. J. Wallace for the appellant.

R. L. Borden for the respondent.

Ontario.]

[Nov. 10.]

MACDOUGALL v. THE LAW SOCIETY OF UPPER CANADA.

Solicitor—Practising without certificate—Nominal member of firm—Professional advertisement.

The firm of M.M. & B., barristers and solicitors, published an advertisement in newspapers which stated that the firm consisted of three partners, W.M., F.M., & N.B., and the three names appeared also on the professional cards and letter headings used by the firm. W.M. not having taken out a certificate of the Law Society, entitling him to practise as a solicitor, proceedings were instituted to have him suspended from practice for three months, unless the fees to the society and a penalty of \$40 were paid. In these proceedings it was shewn by the evidence of F.M., taken under an order for examination, that W.M. was not, in fact, a partner in the said firm; that an agreement of partnership had been entered into between

F.M. and B., who shared all the profits and paid all the expenses of the firm; that no writs were issued in the name of the firm, but were issued in the name of B., and all proceedings in the courts were carried on in B.'s name, and that W.M. was not, at first, aware that his name would appear as an ostensible partner, though he made no objection to it afterwards. As against this, the only act of practising as a solicitor by W.M., shewn by the Society, was that the name of the firm was indorsed on certain papers filed in the Ontario courts in suits with which the firm was concerned.

Held, reversing the judgment of the Court of Appeal (15 Ont. App., 150), and of the Divisional Court (13 O.R., 204), that W.M. did not practise as a solicitor in the courts of the province within the meaning of R.S.O. (1877), c. 140, s. 21, and that he was not estopped, by permitting his name to be published as a member of a firm in active practice, from shewing that he was not, in fact, a member of such firm.

Appeal allowed with costs.

Belcourt for the appellant.

Marsh, Q.C., for the respondent.

New Brunswick.]

[Nov. 10.]

PHENIX INSURANCE CO. v. MCGHEE.

Marine insurance—Action for total loss—Right to recover for partial loss—Findings of jury.

A vessel was insured for a voyage from St. John's, Newfoundland, to a coal port in Cape Breton, and was stranded on the Cape Breton coast at a place where there were no inhabitants and no facilities for repairing any damage she may have suffered. The captain made his way through the woods to a place where he could telegraph to the owners, from whom he received instructions to use every means to get the vessel off as she was only half insured, and to communicate with the owners' agent at Sydney. In response to a telegram to the agent, a tug was sent to the place where the vessel was, and the master of the tug, after examining the situation of the vessel, refused to attempt to pull her off the rocks. About a fortnight later one of the owners came to the place and caused a survey to be held on the vessel, and after receiving the surveyor's report he had her sold at auction, realizing only a trifling amount.

In an action on the insurance policy for a total loss, the only evidence as to the loss was