

The collecting banks could not be held to have vinted the genuineness of the forged cheques merely by derling payment of them without endorsing them.

Barwick, K.C., and J. H. Moss, for the Crown. Shepley, K.C., and Orde, for defendants. Riddell, K.C., and Matheson, for Quebec Bank. J. A. Ritchie, for Sovereign Bank. G. F. Henderson, for Royal Bank.

HIGH COURT OF JUSTICE.

Boyd, C., Magee, J., Mabee, J.]

[March 28.

COBEAN v. ELLIOTT.

Limitation of actions—Real Property Limitation Act—Tenant at will—Devise for life to tenant upon condition—Violation of condition.

A testator, dying in 1873 devised land of which his brother had been in possession since 1848 to his (the testator's) son after the death of his brother, to whom he devised a life estate, "on condition that he neither sells nor rents the same without consent in writing of my son." The brother continued in possession, and on the 1st April, 1895, leased the land (without consent) for one year. The plaintiffs, claiming under the son, sought to recover possession from the devisee of the brother, by an action begun on the 29th May, 1905.

Held, that the brother, having openly set at naught the condition of the will, should not be presumed to have accepted the devise, and the Real Property Limitation Act was a bar to the action.

Semble, upon the evidence, that the brother went into possession as tenant at will, and that the statute had run in his favour before the death of the testator.

Judgment of FALCONBRIDGE, C.J.K.B., affirmed.

W. T. J. Lee, for plaintiffs. T. J. Blain, for defendants.