

Longley, J.]

[November 8.]

GIRROIR v. McFARLAND.

*Title to land—Question of, will not be tried on affidavit on summary application—Ejectment—Parties—Effect of judgment.*

Plaintiff recovered a judgment in ejectment against defendants in respect to a lot of land claimed by him of which they were alleged to be in possession and an order for a writ of possession was granted in pursuance of which the applicant in the present proceeding was removed and plaintiff was placed in possession. The applicant moved for an order to restore her to possession on the ground that subject to a deed made to plaintiff by way of mortgage she was sole owner of the land by purchase and in sole possession at the time of the granting of the order for the writ of possession and recovery of the judgment in ejectment and that she was not a party to the proceedings in which the judgment was recovered.

*Held*, dismissing the motion with costs that the question of title—the question of the validity of the deed or to vary its character—could not in the face of the judgment already given and executed be tried on summary motion and on affidavit.

W. Chisholm, in support of the application. Gregory, K.C., contra.

Meagher, J.—Trial.]

[November 10.]

FULLER v. HOLLAND.

*Bills and Notes—Consideration—Sale of goods—Part delivery—Loss by fire—Question of title.*

Plaintiffs ordered from Belgium a number of packages of goods including 45 packages for defendant all of which arrived at Halifax consigned to plaintiffs and without any mark distinguishing those ordered for the defendant from the others. The terms of payment agreed on were 30 days after the arrival of the goods which was understood to mean 30 days after delivery of the invoice. Defendant was notified of the arrival of the goods and failing to take delivery they were removed to plaintiffs' warehouse. Defendant asked for and received delivery of a part of the goods and the balance was held to his order. Defendant was unable to pay for the goods at 30 days as agreed and offered his note at 60 days, which plaintiffs accepted, defendant paying the interest on the additional thirty days.