

Q.B. Div.]

NOTES OF CANADIAN CASES.

[Com. Pleas.

ber of the beans on a coupon to be cut out of the paper. The defendant was convicted of a contravention of C. S. C. ch. 95.

Held, that as the approximation of the number depended as much upon the exercise of skill and judgment as upon chance, this was not a "mode of chance" for the disposing of property within the meaning of the Act.

PER HAGARTY, C. J.—The Act applies to the unlawful disposal of some existing real or personal property. In this case there were no specific gold coins, nor was there any particular set of harness, to be disposed of, which might have been forfeited pursuant to section 3 of the Act, and therefore the conviction was bad on that ground.

Fenton, for the Crown.

Murdoch, for the defendant.

Rose, J.]

[Dec. 31.

GRIGSBY V. TAYLOR.

Penalty—Forfeiture—Action for—Election Act of Ontario, R. S. O. ch. 10.

In an action under R. S. O. ch. 10, sec. 182, against an agent for the sale of crown lands to recover a penalty alleged to have been incurred by voting at an election of a member to the Legislative Assembly, contrary to sec. 4 of the Act.

Held, overruling a demurrer to the statement of claim, that, though forfeiture and penalties belong to the Crown unless otherwise disposed of, the sum declared to be forfeited by section 4 of the Act for a breach thereof, is a penalty within the meaning of sec. 182, sub-sec. 1, for which an action may be maintained by any person who will sue for the same.

Tilt, Q.C., for the demurrer.

Arnoldi, contra.

Hagarty, C.J.]

REGINA V. SMITH.

By-law for weighing and measuring wood—Delivery in specified waggons—Ultra vires.

The Municipal Council of the city of Hamilton passed a by-law that no person should, upon or after sale thereof, deliver any stove wood in or from any waggon, etc., otherwise than in or from a waggon, of a certain

capacity, the sides of which should be constructed of slats of a certain width and a certain distance apart from each other. The defendant was convicted of a breach of the by-law.

Held, that the by-law was *ultra vires*, for, though the Council had the right, under the Municipal Act, R. S. O. ch. 174, sec. 466, to provide for the weighing or measuring of wood, they had no power to enforce delivery, upon or after sale, in a particular kind of waggon.

Clement, for applicant.

Mackelcan, Q.C., contra.

COMMON PLEAS DIVISION.

Rose, J.]

[Feb. 21.

COUGHLIN V. HOLLINGSWORTH.

Claim—Counter claim—Balance in favour of defendant—Costs.

An action on an unsettled account to which there was a counter claim, also on an unsettled account, was referred. The referee found that there was a sum of \$148.81 due the plaintiff on his claim, and \$164.50 due the defendant on his counter claim, leaving a balance due defendant of \$15.69; and he certified to entitle the defendant to full costs. It appeared that the statute of limitations was pleaded respectively to the claim and counter claim, and the items barred by the statute were in consequence disallowed; but that apart from the statute the balance would have been in plaintiff's favour. On motion to enter judgment the only question was as to the distribution of the costs.

Held, that the plaintiff was entitled to recover the costs of, and relating to his claim and proof thereof, including the reference and subsequent proceedings; and that the defendant was entitled to recover the sum of \$15.69, with the costs of, and relating to his counter claim and the proof thereof, including the reference and subsequent proceedings; the master to decide as to items in common, and that judgment be entered for the party in whose favour the balance shall be found.

G. H. Watson, for the plaintiff.

French, for the defendant.