

Held also, that there was no variance between the evidence and the information to warrant an amendment, but that the evidence disclosed a new offence, and the amended information became in fact a new one, and the defendant, by his presence and by entering on his defence, had waived the service of a summons upon him.

Held also, that it was no objection to the conviction that it was for keeping and selling, while the information charged the keeping only.

JOHNSON v. HEIRS.

Limitation of actions—Possession of dowress.

C. R. died intestate in 1864, seised in fee simple of the land in question, leaving him surviving, his widow and several heirs-at-law. The widow remained in possession from the time of the husband's death until her own decease in 1881, and cultivated the farm. There was some evidence that she kept possession, with the consent of the heirs, for them, but the Court was of a contrary opinion. There was no evidence of a written acknowledgment of their title. She devised the land to the plaintiff.

Held, that the possession of the widow was not a possession of a dowress, and that the title of the heirs-at-law had been thereby barred.

The Statute of Limitations begins to work against the heirs-at-law in favor of a dowress in possession at the expiration of her days of quarantine.

ONTARIO INDUSTRIAL L. & S. CO. v. LINDSEY.

Registry of instrument not authorized by Registry Act—Cloud on title—Damages—Parties—Notice of action to registrar.

S. believing that his father (still living but of unsound mind) was entitled to certain lands to which the plaintiff claimed title, took the advice of his solicitor C., who was advised by counsel, and following his advice instructed C. to prepare and register an instrument whereby he, S., stated that he claimed the lands, and would, upon the demise of his father, commence proceedings for their recovery. This being done the plaintiffs were obstructed in the sale of their lands, and brought an action against S. C. and the registrar to remove the instrument from the title as being a cloud thereon, and for damages.

PROUDFOOT, J., dismissed the action as against the registrar, but awarded judgment with a reference to assess damages against S. and C.

Held, that Registry Act did not contemplate the registration of such an instrument, and, CAMERON, J., dissenting, that an action would lie for its removal.

Per CAMERON, J.—The instrument being void on its face, as being wrongfully registered, resort to a court is unnecessary, and the action should be dismissed.

Per HAGARTY, C. J., and ARMOUR, J.—The act of registration was a wrongful one, and all parties combining in it are therefore responsible to the plaintiffs, and the registrar was therefore a proper party.

Per HAGARTY, C. J.—There being no *mala fides* the damages should be nominal.

Per CAMERON, J.—The registrar was not a proper party, having acted in good faith and within the scope of his duty; nor was C., the solicitor, a proper party, he having acted to the best of his judgment and ability in advising his client after consulting counsel.

Per ARMOUR, J.—No notice of action to the registrar was necessary.

COMMON PLEAS DIVISION.

IN BANCO.

CARTWRIGHT v. HINDES.

Ca. Sa.—Setting aside—Reviewal by Court—Misleading statement in affidavit—Residence.

Held, that the Divisional Court may review the action of a judge setting aside a writ of *capias ad satisfaciendum*, and the arrest thereunder, as also the action of the judge who made the order to arrest.

Held also, from the evidence set out in the case, on objection taken that the defendant was not a resident of Ontario, was not tenable, as it sufficiently appeared that he was such resident; also that a statement made in the affidavit on which the order to arrest issued, that the defendant had made "an assignment of all his property," without adding the words, for the general benefit of creditors, was a misleading statement as inducing a belief that the assignment had been made for a fraudulent purpose, and therefore, on such ground, the order could