

Com. Pleas.]

NOTES OF CANADIAN CASES.

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COMMON PLEAS DIVISION.

DIVISIONAL COURT, MARCH 6.

SCOTT V. CRERAR.

Libel—Publication, evidence of—Nonsuit.

Action for libel. The alleged libel being contained in certain letters or circulars written on a type writer, sent to several members of the legal profession in Hamilton, imputing unprofessional conduct to the plaintiff in sending "bummers" around touting for business; and inducing the clients of other solicitors to leave them and employ the plaintiff's firm. There was no direct evidence to shew that the defendant was the writer; and the plaintiff relied on circumstantial evidence as proving the fact. As part of the plaintiff's case the defendant's examination before trial was put in by plaintiff, and which contained a denial by the defendant that he was the writer.

Held (Rose, J., dissenting), that on the evidence, as set out in the case, there was not sufficient to go to the jury to prove that defendant was the writer, and that a nonsuit was properly entered.

McCarthy, Q.C., for the plaintiff.

Robertson, Q.C., and MacKelcan, Q.C., for the defendant.

RE MASSEY MANUFACTURING CO.

Company—Increase of capital stock—Notice by Provincial Secretary—Municipal Act—Mandamus.

An application was made by the Massey Manufacturing Company to the Provincial Secretary for the issue of notice under his signature pursuant to sub-sec. 18 of sec. 5 of 27 & 28 Vict. ch. 23, for publication, as required by said Act, the application stating that a by-law of the company had been passed increasing the capital stock thereof by \$300,000, making the total capital stock \$500,000, and declaring the number and amount of the shares of the new stock to be 30,000 shares of \$100; that none of the said stock had been subscribed for, and nothing paid thereon. A duly authenticated copy of said by-law was filed on the application to the Provincial Secretary.

Held, that the duty of the Provincial Secretary in the matter on the issuing of the notice was ministerial; and that on the requirements of the statute being complied with the Provincial Secretary had no discretion in the matter, but must issue the notice.

Held, also, that the proper mode of enforcing the issue of the notice was by mandamus.

Robinson, Q.C., and Lash, Q.C., for the applicants.

Irving, Q.C., for the Provincial Secretary.

McCarthy, Q.C., and Neville, for the dissatisfied shareholders.

CARTER V. GRASETT.

Easement—Light and air—Implied grant—Equity of redemption.

P., the owner of lots 8 and 9, by his will devised the same to trustees in trust to sell. In 1869 the plaintiff purchased from the trustees lot 8, on which there was a house with windows overlooking lot 9, immediately adjoining it to the north; the said lot 9 being then open and not built upon. In 1873 the trustees sold lot 9 to Mrs. Priestman, who sold to T., who erected a house thereon. T. sold to G., under whom defendant claimed title. At the time P. became the owner of lot 9, he did so subject to a mortgage thereon, and he continued at the time of his death to have only an equity of redemption thereon. The mortgage was discharged by G., who obtained the usual statutory discharge, which was duly registered by him. The plaintiff claimed that he was entitled by implied grant to the light and air to the said windows, and that the same had been infringed upon by the erection of the house by T.; and he brought this action claiming damages and an injunction.

Held, that by reason of P.'s trustees at the time they sold to plaintiff only having an equity of redemption on lot 9, no such implied grant to light and air could arise.

McCarthy, Q.C., and G. Bell, for the plaintiff.

Robinson, Q.C., for the defendant.