effect: American Abell Engine and Thresher Co. v. McMillan, 42 S. C. R. 377. Whether the wife's execution of the deed as a party thereto to bar her dower satisfies the requirements of sec. 20, seems open to doubt. See Canada Permanent L. and S. Co. v. Taylor, 31 C. P. 41. Section 24, which gives to the wife all the locatee's interest in the land during widowhood, also gives the widow the right to elect to have her dower in the land in lieu of the provision aforesaid. The right to elect does not arise until the death of the husband. Whether any and what interest passed to the defendant by the deed of the 8th March, 1902, it is unnecessary and inexpedient to decide, in the absence of Clement and his wife.

It is sufficient for the present case that nothing passed to the plaintiff under his agreement, and he was not, at the date of the passing of 8 Edw. VII. ch. 17, the owner of the lands, so as to enable sec. 4, sub-sec. 3, to operate in his favour to give him the minerals. He, in short, fails to shew title, and the action fails as against the defendant, who is in possession.

I think the appeal should be allowed. As the point upon which the case is now disposed of is raised for the first time at Bar, there should be no costs here or below.

[See Asselin v. Aubain, ante 986.]

STOKES v. REYNOLDS—MASTER IN CHAMBERS—JUNE 28.

Summary Judgment—Con. Rule 603—Special Indorsement of Writ of Summons—Defence.] — Motion by the plaintiff for summary judgment under Con. Rule 603. The action was upon an agreement under seal by which the defendant agreed to buy certain chattels for $900, payable on the 4th April, 1910. The agreement contained covenants by the defendant for title, indemnity, and to deliver possession. The defence suggested was that the defendant had not got the goods in question, but it was not said that the plaintiff had refused to deliver them. The Master said that this was not a defence: Benjamin on Sale, 7th Am. ed., secs. 313, 314, 315, 764, citing Martindale v. Smith 1 Q. B. 395, and other cases. It was contended also that the claim could not be specially indorsed, the defendant relying on Hood v. Martin, 9 P. R. 313. The Master said that it seemed to come under clause 6 and 7 of the forms in appendix No. 5 to the Con. Rules; see Gerrard v. Clowes, [1892] 2 Q. B. 11. Judgment for the plaintiff with costs. C. F. Ritchie, for the plaintiff. J. M. Ferguson, for the defendant.