

RECORDS OF DEEDS, WHEN NOTICE, AND OF WHAT.

Parliament which created it, and it can of course do nothing beyond the limits which circumscribe those powers. But when acting within those limits, it is not in any sense an agent or delegate of the Imperial Parliament; but has, and was intended to have, plenary powers of legislation, as large and of the same nature as those of Parliament itself."

Imperial legislation affecting colonial laws is in harmony with these views as to plenary powers of legislation. By the Imperial Act 28 & 29 Vict. c. 63, it is enacted that any colonial law which is repugnant to any Imperial Act extending to the colony, shall, to the extent of such repugnancy, but not otherwise, be void and inoperative; and repugnancy to the law of England shall not render such colonial law void or inoperative.

If the judicial interpretation of colonial legislative power is correct, then it logically follows that the Provincial Legislatures, within their limits, "have plenary powers of legislation as large, and of the same nature, as those of the Imperial Parliament itself." And as the B. N. A. Act gives them express power to establish municipal institutions, this delegation of legislative authority necessarily follows, as an incident to the exercise of that power.

We understand that the case of *Regina v Hodge* is to be appealed to the Privy Council as a test case on the right of Provincial Legislatures to delegate to local bodies legislative power to prescribe regulations and to attach penalties for their infraction. But in case there should be a difficulty in giving to the words authorizing the License Commissioners "to impose penalties," the wide interpretation claimed by the prosecution in this case, it would be judicious for the Legislature at its present session to adapt to the license law the express powers as to penalties and punishments given to municipalities by the Municipal Act.

T. H.

SELECTIONS.

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At common law no record was required of a deed; title was passed by the livery of seisin. By the statute of uses, deeds made under it were required to be enrolled. This enrolment is something distinct from the system of recording deeds universally adopted in the United States.* Enrolment is necessary to deeds under the English statute, but, as between parties, deeds of bargain and sales in the United States are generally good, although not recorded.†

Recording is, then, only necessary to give notice to third parties of the conveyance, and to preserve proof of it. As to notice to third persons, if actual notice exist, no record need be proved, but the deed is good as to such subsequent purchasers with notice.

What is actual notice is sometimes a matter of doubt. Whilst, in some States, the actual notice must be such as will prevent the grantee in a subsequent recorded deed from taking precedence of the grantee in a prior unrecorded one, on the ground that it would be fraud on the part of such grantee to purchase, attach or levy on the land to the prejudice of the first purchaser, generally whatever is sufficient to direct a prudent man's attention to the prior rights and equities of others, and enable him to ascertain them upon inquiry, will be sufficient to charge him with notice of such facts.‡ But it is less to the consideration of what is actual notice, than of what is the constructive notice arising from the record, and to what such notice extends, and whom it affects, and how it begins, and when, that the inquiry of this article is directed. And generally the notice is only of such things as appear properly by the record, so that if a deed be improperly recorded, it is not notice.§ And it is notice only of such things as appear by the record, and no others. Such is the ruling of Chancellor Kent in

* Martindale on Conveyancing, sec. 269.

† "In North Carolina, no conveyancing shall be good unless the same shall be registered in the county where the land shall lie within two years after the date of said deed." Laws 1876-7 chap. 23, sec. 1.

‡ Martindale on Conveyancing, sec. 281, and notes.

§ *Hainey v. Alberry*, 73 Mo. 427, and cases cited; *Dail v. Moore*, 51 Mo. 589; *Black v. Gregg*, 58 Mo. 565; *Stevens v. Hampton*, 46 Mo. 404; *Ryan v. Carr*, 46 Mo. 483; *Bishop v. Schneider*, 46 Mo. 472; Martindale on Conveyancing, sec. 271 and notes and cases cited.