

Q. B. Div.]

free from objection in special demurrer, but that facts whose existence would void it should be shown.

McCarthy, Q.C., and Creelman, for petitioner.
Shepley, contra.

QUEEN'S BENCH DIVISION.

Cameron, J.]

[Oct. 20.]

REGINA V. BENNETT.

Temperance Act, 1878—Information—Different offences—Amendment when case closed—Proof of order in council—Constitutional law—Right to appoint Justices of Peace.

32-33 Vict. ch. 31, s. 25, is violated by an information which includes the three offences of keeping for sale, selling and bartering intoxicating liquors prohibited by s. 99 of Imperial Act of 1878.

A magistrate cannot judicially notice orders in council or publication thereof, unless proved by production of the official *Gazette*.

The Ontario Legislature had power under No. 14 of sect. 92, B. N. A. Act, to pass ch. 71 R. S. O. as to appointing Justices of Peace.

Irving, Q.C., for the Crown.
McCarthy, Q.C., contra.

CHANCERY DIVISION.

Proudfoot, J.]

[Nov. 8.]

HOPKINS V. HOPKINS.

Will—Invalid devise—Possession—Statute of Limitations.

A devise of land to J. H. in fee, was void on account of J. H. being a witness to the will. The devise was subject to a lease which had nearly twelve years to run from the death of the testator, as to which the testator directed the rent payable thereunder to be paid one half to J. H., the other half to his executors, to be invested, and principal and interest paid to J. H. as the executor might think he required it. The executor, assuming the devise to be valid, paid the rent to J. H. The latter executed a deed of the land to C. H., who received the rents thereafter through J. H., with the privity of the executors. C. H. went into possession after the expiration of the lease.

Held, that the direction as to the rents was

void, as they belonged beneficially to J. H.; and also, following *In re Goffe*, 8 P. R. 92, that the rights of the true owners had been barred by the receipt of the rents by J. H. and C. H.

Proudfoot, J.]

[Nov. 8.]

GILLIES V. MCCONOCHE.

Will, construction of—Charities—Mixed fund—Cy pres—Administration of fund—Jurisdiction.

A gift to a charity out of a mixed fund is valid, if there be enough pure personalty to answer the bequest.

The testator who was a minister of the United Presbyterian Church of North America, after bequeathing \$1,000 to that church, provided:—"I give for a Jewish Mission the sum of \$1,000, to that Church which is sound and Evangelical in doctrine, and pure in worship, using in songs of praise the inspired books which can unite all nations, Jews and Gentiles, in all ages," etc. The witnesses said that this description could only apply to one other church besides that to which the testator belonged; but it did not appear that his church had a mission to the Jews, or was willing to apply the legacy for that purpose.

Held, that the testator intended the bequest for his own church, and a reference was directed to enquire as to the missions, etc.

"To the pious, poor, converted Jews that meet together for the reading of the Scriptures for their instruction and mutual edification, I leave \$1,000. . . . The balance of my estate I leave to the poor and destitute, to supply their temporal wants in food and raiment."

Held, that the first bequest was a good charitable bequest, and not void for uncertainty; and that the second was also good so far as the residue consisted of pure personalty. That there should be enquiries whether any such Jews were to be found, whether there were any poor in the congregation of which the testator was pastor who needed assistance, or whether he had any poor relations.

Held, also, that as to the bequests to the Jewish mission, and to pious, converted Jews, if the above church would not accept the former, or if no such pious Jews should be found, the Court would administer the funds *cy pres*.