

Q. B. Div.]

NOTES OF CANADIAN CASES.

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COUNTY OF BRUCE V. MCLAY.

Registrar—Dismissal during year—Return to municipality—Liability for excess of fees.

The defendant was Registrar of the County of Bruce, and, during the year 1882, was discharged from office. The plaintiffs brought this action for the recovery of the proportion of the amount of fees received by him up to the time of his dismissal, in excess of the amount allowed to be retained by him pursuant to R. S. O. cap. 111, sect. 104.

Held, [affirming the judgment of GALT, J.] that the dismissal of the defendant during the year did not deprive the plaintiffs of their right to recover the excess, which right does not depend upon the return to be made in each year.

HARREN V. YEMEN.

Mortgage—Second mortgage—Power to second mortgagee to pay arrears on first mortgage and distrain—Purchase by second mortgagee under power in first mortgage—Distress.

The plaintiff mortgaged his land to the L. L. and S. Co. by a mortgage which contained a distress clause, and gave a second mortgage to the defendant, by which it was agreed between them that if default was made in payment of interest to the company the defendant should be at liberty to pay it, and should have the same remedies for its recovery from the mortgagor that the company had. Default was made, and the company exercised their power of sale, and the defendant became the purchaser. After signing a contract for the purchase he distrained the goods of the plaintiff for the interest that had fallen in arrear to the company. Shortly afterwards he obtained a formal conveyance of the land expressed to be under the power of sale in the company's mortgage.

Held, that the plaintiff's estate having paid the mortgage debt to the company in full, the defendant could not be said, by means of his purchase contract, to have paid the interest in arrear so as to entitle him to distrain therefor.

A. H. Lefroy, for plaintiff.

F. K. Kerr, Q. C., for defendant.

COUGHLIN V. CLARK.

Promissory note—Repeal of Stamp Act—Pleading—Amendment.

Action on a promissory note which, at its making, was not stamped, but had been double

stamped before action, and after the repeal of the Stamp Act the defendant denied the making of the note. At the trial leave to plead the sufficient stamping was refused on account of the repeal of the Stamp Act, but the plaintiff was allowed to amend by adding allegations showing the consideration.

WILSON, C. J., gave judgment for the plaintiff. *Held*, that the judgment was right.

Per HAGARTY, C. J.—The learned judge was not bound to allow a plea of insufficient stamping to be added by way of amendment under the circumstances.

Per ARMOUR and CAMERON, JJ.—The amendment should have been allowed. The note, even if unstamped or insufficiently stamped, was admissible in evidence of the debt to the plaintiff, the Stamp Act not prohibiting such use of it.

Per CAMERON, J.—It is necessary, under the Judicature Act, to plead specially want of stamps. The unstamped note was, in its inception, valid, but became invalid by neglect to stamp it. The repeal of the Stamp Act leaves the law where it was before those Acts were passed, and the note being originally a valid transaction is now valid.

REGINA V. BENNETT.

Temperance Act, 1878—Information—Waiver.

An information was laid against the defendant, on 28th December, 1883, (*sic*) for having, on 25th December, sold intoxicating liquor in violation of the Canada Temperance Act. Upon a search made intoxicating liquor was found on the premises on 1st January, 1883. On this evidence the information was amended so as to charge the keeping and not the selling. The defendant was present at the amendment and waived an adjournment, and entered upon his defence. The magistrate having found the defendant guilty, drew up a conviction for keeping intoxicating liquor, which was returned to the Clerk of the Peace and filed on 17th January, 1883. On the 27th January, 1883, he drew up a second conviction the same in all respects as the first with the exception that it was for keeping for sale intoxicating liquors. This was also returned and filed.

Held, that he had power to draw up and return the second conviction.