

Q. B. Div.]

NOTES OF CANADIAN CASES.

[Q. B. Div.]

QUEEN'S BENCH DIVISION.

Divisional Court.]

REGINA V. DUNNING.

Weights and Measures Act—42 Vict. ch. 16 (D.), and amendment—Crime—Evidence of defendant—Imprisonment—Jurisdiction—Certiorari—Conviction bad in part.

The defendant was convicted by two justices of the peace under the Weights and Measures Act, 42 Vict. ch. 16, sec. 14, sub-sec. 2 (D.), as amended by 47 Vict. ch. 36, sec. 7 (D.), of obstructing an inspector in the discharge of his duty, and was fined \$100 and costs, to be levied by distress, imprisonment for three months being awarded in default of distress.

At the hearing before the justices the defendant tendered his own evidence, which was excluded.

The defendant appealed to the Quarter Sessions, and on the appeal again tendered his own evidence, which was again excluded, and the conviction affirmed.

On motion for *certiorari*,

Held, that, the conviction having been affirmed in appeal, *certiorari* was taken away, except for want, or excess, of jurisdiction, and that there was no such want, or excess, of jurisdiction, inasmuch as the justices and the Quarter Sessions had jurisdiction to determine whether the defendant's evidence was admissible or not, and that such determination, even if erroneous in law, could not be reviewed by *certiorari*.

Per ARMOUR, J.—That even if the determination on this point could be reviewed, the justices were right in excluding the evidence of the defendant, inasmuch as the offence charged was a crime.

Held, also, (ARMOUR, J., dissenting,) that although irregularly directed, imprisonment was justified in default of distress by sec. 62 of 32 and 33 Vict. ch. 31 (D.), incorporated in the Weights and Measures Act by sec. 53 thereof; but that if such imprisonment were not so justified the whole conviction would be bad, there being no power to amend by striking out the award of imprisonment.

Per ARMOUR, J.—That the 32 & 33 Vict. ch. 31, sec. 62 (D.), should only be construed as fixing the duration of the term of imprisonment where the special Act provides specifi-

cally for some imprisonment without fixing its duration; and that as no imprisonment is expressly imposed by the Weights and Measures Act for the offence charged here, so much of the conviction as awarded imprisonment was made without jurisdiction, and was therefore bad; but that it was separable from the rest of the conviction, and should be quashed, leaving, however, the rest of the conviction to stand.

Shepley and McDougall, for motion.

Clement, contra.

Divisional Court.]

HENDERSON V. KILLEY ET AL.

Partnership—Dissolution—Agreement by new firm to pay debts of old—Right of creditors to enforce—Creation of trust.

K. and M., having carried on business under the name of K. & Co., dissolved partnership, and K. gave M. sixteen promissory notes for \$500 each, with interest, for his share in the business, which was continued by K. K. afterwards, by agreement under seal, formed a partnership with O., to continue until a joint stock company should be formed to take over their assets, and K., by this deed, was to transfer to the co-partnership, as his contribution to the capital, all the assets of his business, to be taken at a valuation, subject to the deduction of his liabilities, which were to be assumed by the co-partnership and charged against him. Amongst K.'s liabilities, known to O. were ten of these notes, which he had indorsed to the plaintiff before they fell due. The new firm paid two of them, with interest on others, and there were negotiations for an extension of time to pay the whole. The company had been formed, and K. had transferred his interest to it. The assets of K. transferred to the new firm were sufficient to pay his liabilities.

Held, that though the plaintiff could not have sued upon the deed, not being a party to it, the circumstances established the relationship of trustee and *cestui que trust*, and entitled the plaintiff through K., as her trustee, to enforce performance of the stipulation in the deed for payment of the notes held by her.

Osler, Q.C., for motion.

Robinson, Q.C., and *Mackelcan*, Q.C., contra.