

case, and in passing sentence acted upon the law as he understood it. If the penalty were changed, the defendant might be deprived of his right of appeal to the Sessions. He might desire to appeal from a sentence to pay \$400 and be imprisoned, and there is no power on this application to extend the time for appealing.

Motion refused without costs.

McMAHON, J.

FEBRUARY 23RD, 1903.

TRIAL.

RUPERT v. SISLEY.

Nuisance—Construction of Artificial Ponds—Injury to Neighbour's Property—Evidence of Damage.

Action by Rachael Rupert and Lucinda McQuarrie against Euston Sisley, a physician practising in the village of Maple, who owned lands adjoining the lands of the plaintiffs in that village, for an injunction and damages in respect of injury to plaintiffs' property by the construction of ponds and dams for fish on his premises, which ponds the plaintiffs alleged were a nuisance.

W. Proudfoot, K.C., and W. A. Skeans, for plaintiffs.

E. F. B. Johnston, K. C., and W. Cook, for defendant.

MACMAHON, J., held as to the claim for damages in regard to the alleged noxious smell from the ponds, and the noises said to be caused by bull-frogs, that defendant was not liable, the grievances not being, on the evidence, well founded. As to the claim for dampness in plaintiffs' cellar alleged to be caused by the percolation of water from defendant's ponds, it was also not well founded, the dampness being attributable to the character of the soil. As to the sinking of a floor in plaintiffs' house, it was not caused by dampness arising from the ponds, but was attributable to the decay of the supports. All the other claims failed also. Action dismissed with costs.

WINCHESTER MASTER.

FEBRUARY 24TH, 1903.

CHAMBERS.

MARTIN v. MOODY.

Particulars—Motion for—Affidavit—Notice of Reading—Omission of Statement of Date of Filing—Sufficiency of Notice—Particulars of Defence—Contract—Interest—Offers.

Motion by plaintiffs for particulars of paragraphs 2, 3, 4, and 5 of the statement of defence. On 3rd February plain-