

Sup. Ct.]

NOTES OF CANADIAN CASES.

[Sup. Ct.]

the latter was merely carrying out the original intention of the parties. The stock was destroyed by fire on March 8th, 1877, and an action having been brought on the policy, it was tried before a judge without a jury, and a verdict was given for the plaintiff.

The Supreme Court of Nova Scotia set aside this verdict, and ordered a new trial, on the ground that the plaintiff had no insurable interest in the property when the insurance was effected, and that no subsequently acquired interest would entitle him to maintain the action. One of the conditions of the policy was "that all insurances," whether original or renewed, shall be considered as made under the original representation, in so far as it may not be varied by a new representation in writing, which, in all cases, it shall be incumbent on the party insured to make, when the risk has been changed, either within itself, or by the surrounding or adjacent buildings. On appeal to the Supreme Court of Canada,

*Held*, that the case did not come within the rule laid down in *Eureka Woollen Mills Co. v. Moss* (decided this term), and was one properly appealable.

That the appellant having had no insurable interest when the insurance was effected, the subsequently acquired interest gave him no claim to the benefit of the policy, the renewal of the existing policy being merely a continuance of the original contract.

Appeal dismissed with costs.

*Gormully*, for the appellant.

*Tremaine*, for the respondents.

New Brunswick.]

BYRNE V. ARNOLD ET AL.

*Justices of the peace — Conviction — Canada Temperance Act, 1878, Sec. 105 — Absence — Wrongful arrest — Justification.*

A. and B., Justices of the Peace for King's County, were sued for issuing a warrant of commitment under which B. (appellant) was imprisoned.

The facts, as proved at the trial, were as follows: A prosecution under the Canada Temperance Act, 1878, was commenced by two justices, A. and B., and a summons issued. On the return of the summons, on the applica-

tion of the defendant, A. and B. were served with a subpoena, to give evidence for the defendant on the hearing; whereupon two other justices (the respondents), at the request of A. and B. under the provisions of sec. 105 of the Act, heard the case and convicted the appellant. A. and B., though present in the court room as witnesses, took no part in the proceedings.

The Supreme Court of New Brunswick ordered a nonsuit to be entered. On appeal to the Supreme Court of Canada,

*Held* (affirming the judgment of the Court below, HENRY and TASCHEREAU, JJ., dissenting), that as the conviction was good on its face, it was a justification for respondents until set aside, for anything done under it.

*Held*, also, that upon the facts disclosed A. and B. were "absent," within the meaning of sec. 105 of the Canada Temperance Act, 1878.

Appeal dismissed with costs.

*Weldon, Q.C.*, for appellant.

*A. S. White*, for respondents.

New Brunswick.]

FAWCETT V. ANDERSON.

*Contract — Novation — Sale of land — Delivery of deed for inspection — Receipt for — Action on.*

Land was sold at auction by A. (plaintiff), under power of sale in a mortgage to W., and one F. (defendant), became the purchaser; the terms of sale being ten per cent. cash, and balance in one and two years, with interest, secured by joint notes of defendant and some other responsible person. Defendant paid the ten per cent. and a conveyance was prepared and executed by W. in favour of defendant, and was given to plaintiff for the purpose of having sale completed. Plaintiff took the deed to defendant, who said that he wished to show it to his attorney; but plaintiff objecting to part with the deed without something to show that the purchase money had not been paid, defendant signed and gave to plaintiff a receipt as follows: "Received from E. A. (plaintiff) a deed given by W. for a piece of land bought, etc. The above mentioned deed I receive only to be examined, and if lawfully and properly executed, to be kept; if not lawfully and properly executed, to be returned to E. A. When