

C. of A.]

NOTES OF CASES.

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claim was a sum of money secured by way of of mortgage upon certain lands in this Province, and that the suit was brought to recover the same, and that the alleged cause of action did not arise within ten years before this suit.

Held, (Moss, C. J., A., Burton, Patterson, J.J.A., and Blake, V. C.), reversing the judgment of Morrison, J., overruling a demurrer to the plea, that the limitation, under 38 Vict. cap. 16, sec. 11, of ten years within which an action must be brought to recover money secured by a mortgage, does not extend to a covenant contained in the mortgage for payment of the amount.

Bethune, Q.C., (with him *A. Gall*) for the appellants.

Ferguson, Q.C., for the respondent.

Appeal allowed.

From C. P.]

[January 15.]

LA BANQUE NATIONALE V. SPARKS.

Application to re-stamp under 37 Vict. cap. 47, s. 2.

Upon the announcement of an intended decision in this case differing from that of the Court of Common Pleas, in which they held that the curative sections of 31 Vict. cap. 13, sec. 12, as amended by 37 Vict. cap. 47, sec. 2, did not apply to bankers and brokers, the counsel for the plaintiffs applied to stay the certificate until he could make an application to take the note out of Court for the purpose of stamping it. The Court granted the application, and after the note had been stamped, a motion was made for an order granting a new trial, or for a nonsuit, or for such other relief as it was competent for the Court to give. It appeared that the particular objection to the stamping of the note was called to the attention of the plaintiffs' counsel during the argument in the Court below; but it was not shown that any application had been made to that Court, at the time, for the note to re-stamp it.

Held, (Burton, Patterson, J.J.A., Harrison, C.J., and Blake, V.C.) that the plaintiffs were not entitled to the relief asked, as they had not availed themselves of the privilege of stamping the note under 37 Vict. cap. 47, sec. 2, as soon as they acquired a knowledge of the defect.

Snelling, for the plaintiffs.

M. C. Cameron, Q.C., and *McMichael, Q.C.* for the defendant.

Motion refused.

From C. C. Hastings]

[January 15.]

DONNELLY V. CROSBY.

Verdict rendered by mistake.—Changing of same by Judge.

In this case, the jury, after being out for some time, came into court with their verdict, which was taken down by the judge as verdict for defendant and so read over to the jury and recorded. The jury were discharged, and about half-an-hour afterwards, one of the jurymen told the judge that the verdict given was for the plaintiff, whereupon the judge called back the jury, some of whom had left the court room, put them into the box, and polled them, when they all said that the verdict was for the plaintiff. The judge did not then alter the verdict, but two days afterwards, and after hearing counsel, he struck out the verdict for the defendant, and entered it for the plaintiff, and afterwards refused in term to disturb such verdict.

Held (Moss, C. J. A., Burton, Patterson, and Morrison, J.J.A.) that the judge had no power so to change the verdict; and the appeal was allowed with costs, and a new trial without costs in court below granted.

H. J. Scott, for appellant.

G. E. Henderson, Q.C., and *G. D. Dickson*, for respondent.

Appeal allowed.

From C. C. Wentworth.]

[January 16.]

NORDHEIMER V. ROBINSON.

Contract—Construction of—Hire Receipt.

The defendant, wishing to purchase an organ from the plaintiff on credit, gave him a conditional hire receipt, which acknowledged the receipt of the organ on hire at \$4 a month, but gave him the right to purchase it for \$129, payable as follows: a cash payment of \$50, and the balance with interest in one year from date; and it was stipulated that the organ should remain the plaintiff's property, on hire, until payment was fully made. The defendant paid the \$50 and obtained the instrument. At the expiration of the year, the defendant was granted an extension of time—which was followed by similar indulgences, until at last being pressed for payment by the plaintiff's agent, he offered to pay \$50 cash, and balance in four months. Their agent communicated this offer to the plaintiffs, who replied, "As we require this matter closed-up you can accept."