

Q. B. Div.]

NOTES OF CANADIAN CASES.

[Q. B. Div.]

Held, that as there had been a partial performance of the defendant's agreement, by retaining the plaintiff in office for the period within which the seventy-six shares were to have been paid for, there could be no rescission of the whole contract: that the plaintiff—the finding of the jury as to the forty-four shares not having been moved against—was entitled to a return of these shares, and the defendant to judgment for the price of the seventy-six shares; and that the plaintiff's remedy, if any, for wrongful dismissal was by an independent action.

Held, also, that the defendant having performed his portion of the agreement, the Statute of Frauds, as regards agreements not to be performed within a year, was not applicable to the undertaking to keep the plaintiff in office.

Osler, Q.C., and *Nesbitt* for plaintiff.

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

REGINA V. BUNTING.

Ontario Judicature Act—Constitution of Courts—Criminal proceedings—Removal of indictment by certiorari—Practice.

An indictment was found against the defendants in the High Court of Justice at its sittings of Oyer and Terminer and gaol delivery, and, on being called upon to plead, the defendants demurred to the indictment. A writ of *certiorari* was subsequently obtained by the defendants, in obedience to which the indictment, demurrer and joinder were removed to the Queen's Bench Division. Upon the return the Crown took out a side-bar rule for a consilium, and the demurrer was set down for argument. A motion was made by the defendants to set aside the proceedings of the Crown on the ground that they should have been called upon to appear and plead *de novo* in this Division.

Held, WILSON, C. J., dissenting, that the Court of Assize of Oyer and Terminer and of general gaol delivery is now by virtue of the Judicature Act the High Court of Justice; that the indictment was found, and the defendant appeared and demurred thereto in the High Court of Justice; and that it was not necessary to plead *de novo* to the indictment.

Per ARMOUR, J., and O'CONNOR, J.,—The

Supreme Court of Judicature is not properly a Court, and ought more properly to have been called the Supreme Council of Judicature. The Divisions of the High Court are not themselves Courts, but together constitute the High Court, which is thus divided for the convenience of transacting business; and the judges sit as judges of the High Court, and exercise the jurisdiction and administer the functions of the High Court.

The recognizance entered into by the defendants on the removal of the proceedings to this Division, provided that they should "appear in this Court and answer and comply with any judgment which may be given upon or in reference to a certain indictment, or upon or in reference to the demurrer to such indictment, and plead to said indictment if so required:"

Per WILSON, C. J., *semble*.—That the practice and procedure before the Judicature Act should be maintained in its entirety, though possibly it might be varied by agreement. By the recognizance the defendants had not agreed to vary it; but they might thereunder elect to appear and answer to the indictment, or to appear and argue the demurrer; and they, being ready to appear and answer the indictment, would fully perform the condition of the recognizance by so doing.

Irving, Q.C., and *Bethune*, Q.C., for the Crown.

McCarthy, Q.C., *Richards*, Q.C., and *W. A. Foster*, contra.

REGINA V. JAMIESON.

Lottery Act—Giving prizes for guessing number of buttons in glass jar—Quashing conviction—Costs.

The defendant placed in his shop window a globular glass jar, securely sealed, containing a number of buttons of different sizes. He offered to the person who should guess the number nearest to the number of buttons in the jar a pony and cart, which he exhibited in his window, stipulating that the successful one should buy a certain amount of his goods.

Held, that as the approximation of the number of buttons depended upon the exercise of judgment, observation and mental effort, this was not a "mode of chance" for the disposal of property within the meaning of the Act.