

*Semble*, that the court had no power to amend the conviction by substituting the maximum penalty prescribed by s. 72 for a first offence.

*J. B. MacKenzie*, for defendant. *J. R. Cartwright*, K.C., for Crown.

Falconbridge, C.J., MacMahon, J., Riddell, J.]

[Oct. 10.]

QUART *v.* EAGER.

*Vendor and purchaser—Conveyance—Covenant for additional payment if land disposed of by purchaser—Recitals—Breach of covenant—Conveyance by purchaser—Personal order—Lien—Declaration—Enforcement by sale—Covenants running with the land.*

Appeal by defendants from the judgment of BOYD, C. By conveyance of October, 1901, the land in question was conveyed by the plaintiff to Daniel Eager and Thomas Sanderson for \$200 with the proviso that if the land is fenced in the manner forbidden, or in the event of its being sold, leased or otherwise disposed of, a further sum of \$500 cash as additional consideration should be paid, making \$700 in all. The strip was sold as an entrance for railway purposes to mill property, and evidence was given that the plaintiff had confidence that the original purchasers could not use it so as to be a source of trouble and annoyance to him and so reduced the price on the above condition. Eager and Sanderson sold this portion with other portions to Eager & Sanderson Co. by conveyance made subject in express terms to the stipulations, covenants, and conditions set out in the first deed of 1901. Eager & Sanderson Co. sold and conveyed the strip in July, 1904, to William Eager and Richard Eager, the present defendants, and this conveyance was again made expressly subject to the original stipulations in the deed of 1901. The plaintiff now asks for the payment of \$500 with a lien on the land and personal judgment against the defendants.

The defence was that there was no privity of contract and that the transaction sued on was void as being in restraint of alienation and on the ground that the conveyance of 1901 transgressed the rule as to perpetuity.

*Held*, 1. That where the operative part of a deed appears to