

offence was committed, and so get behind the warrant to contravene the return.

Sections 4 and 5, R.S.O., c. 70, are not intended to apply to criminal cases when no examination has taken place.

Section 752 of the Criminal Code, 55-56 Vict., c. 29, only applies where the court or judge making the direction has power to enforce it, and a court or judge in Ontario has no power over a judge or justice in Quebec to compel him to "take any proceedings or hear such evidence," etc.

It is a crime under section 394 of the Code to conspire by any fraudulent means to defraud any person. So if there was a conspiracy to permit persons to travel free on a railroad that would be a conspiracy against the railway company.

McCarthy, Q.C., for the Crown.

E. F. B. Johnston, Q.C., and *Mortimer Clark, Q.C.*, *contra*.

Practice.

MEREDITH, J.]

[Nov. 1.

MOORE v. DEATH.

Indemnity—Third party notice—Rules 328, 1313—Counterclaim.

In an action, the assignee of a mortgage against the mortgagor and the purchasers from him of the equity of redemption, the latter alleged that they had been induced by the mortgagee to purchase the lands by his promise to discharge the mortgage and accept in its place an assignment of a mortgage from the same mortgagor on another property, which agreement he had failed to carry out, and had afterwards assigned the mortgage to the plaintiff, his wife.

Held, that the purchasers of the equity were not entitled to claim "indemnity" against the mortgagee, within the meaning of that word as used in Rule 328, as amended by Rule 1313; and a third party notice served upon him was set aside.

Semble, a proper case for a counterclaim against the plaintiff and the third party jointly to enforce the alleged agreement or for damages.

J. A. Paterson for the defendants.

W. H. Blake for the third party.

MEREDITH, C.J.]

[Nov. 9.

IN RE DANIEL.

Evidence—R.S.O., c. 136, s. 12—Infants—Insurance moneys—Petition for appointment of trustee—Letters of guardianship—Certificate of foreign court.

Where certain infants living with their mother in the Province of Nova Scotia were entitled to insurance moneys payable in Ontario, and their mother petitioned to be appointed trustee under R.S.O., c. 136, s. 12, to receive such moneys, letters of guardianship issued to her by a Probate Court of the Pro-