

U.C. In England, as to notes, the law was, and is, different. The cases are collected at p. 284, fifteenth edition of Byles on Bills. Our Code of 1890 very closely follows the English Code of 1882. The words of the clause relating to the presentation of bills of exchange are identical, but when it comes to promissory notes there is a marked departure. By the English Act, s. 87, "Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place in order to render the maker liable."

In our s. 86 the words quoted are not to be found. The whole section is recast, but in such a manner as to leave apparently an open question whether the law remains as it was as to presentment of notes so far as the liability of the maker is concerned, suggesting a case for costs only in the discretion of the judge, or whether we are now supposed to be at one with the English law and authorities. As the point was not raised at the trial, and, as I suppose, in case of a nonsuit it would only be a matter of bringing another suit, and even now making presentation (if necessary), I do not think I ought to determine the point without full argument. I am told a Nova Scotia court has taken the view that presentation must precede action against a maker.

MANITOBA.

KILLAM, J.]

[April 17.]

GREY V. M. & N.W. RAILWAY COMPANY.

Sale of railway under mortgage—Jurisdiction where part of railway is outside of province.

This was a suit brought by the plaintiffs as first mortgagees in trust for bond-holders of the defendants' railway and appurtenances, asking for a sale of the property, and for the appointment of a receiver in the meantime. The plaintiffs' mortgage covered a section of the defendants' railway line extending from Portage la Prairie 180 miles in a northwesterly direction, and terminating at Langenburg, a point in the Northwest Territories, 9½ miles beyond the limits of Manitoba. The jurisdiction of the court to order a sale of this last-mentioned portion of the railway was disputed. The plaintiffs claimed, however, that the court could order a sale of the whole of the division, or, at any rate, of the portion of the railway within the province.

Held, that the court could not decree a sale of a section of the railway unless it were one proper to be cut off, and operated separately by a purchaser; but that, under the circumstances, the court has jurisdiction to decree a sale of the whole division, although part of it is in the Northwest Territories.

In order, however, to make a good title for that part to a purchaser, the decree should provide that proceedings for sale should conform to the terms of the power of sale in the plaintiff's mortgage.

Held, also, that it was not necessary to plead want of jurisdiction; but, if suggested by the evidence, the question would be considered, although not raised on the pleadings.