ferred to interfere with his finding, and dismissed a motion to quash a conviction made by him against defendant.

Bigelow for the defendant.

J. J. Maclaren contra.

Div'l Ct.]

ANDERSON *v.* C.P.R.

Railways—Condition limiting liability for loss of baggage—Letters written between the company's officers—Admissibility of.

In an action by the plaintiff, a passenger by defendants' railway, for loss of her baggage, and in which the defence was, the defendants' liability was limited, by a condition on the ticket, to $100, certain letters were admitted in evidence, one written by the defendants' general baggage agent to the passenger agent asking whether plaintiff's attention had been called to the condition on the ticket, and why it had not been signed by her; and the other the reply thereto, stating that the Company's rules did not require unlimited first-class tickets signed, and that this ticket had been sold at full tariff rate.

Held, that the letters were properly admitted, but they were of no consequence as the ticket on its face showed that it was not purchased subject to the condition.

Held, also, that the six months limitation clause, R.S.C., c. 109, sec. 27, does not apply to an action of this character arising out of contract, but to actions for damage occasioned by the company in the execution of the powers given or assumed by them to be given for enabling them to maintain their railway.

Wallace Nesbitt for the plaintiff.

G. T. Blackstock for the defendant.

Chancery Division.

ROBERTSON, J.] [Sept. 5.

O'SULLIVAN *v.* PHELAN.

Will—Devise—Condition in restraint of sale—Restricted to name and family of testator.

A testator by his will devised certain real estate to two of his nephews, subject to the following condition: "But neither of my said nephews is to be at liberty to sell his half of the said property to any one except to persons of the name of O'S. in my own family. This condition is to attach to every purchaser of the said property."

Held, that as all power of alienation was not taken away the condition was good in respect to a sale, but that there was nothing in it to prevent disposing of the property in any other way, as by gift, devise, or otherwise, and that there was power to mortgage.

Re Macleary, L.R. 20 Eq. (p. 188) followed.

Re Watson v. *Woods*, 14 O.R. 48, referred to.

Anglin for plaintiff.

Moss, Q.C., for infant defendants.

No one appeared for adult defendants.

Full Court.] [Sept. 12.

CUMBERLAND *v.* KEARNS

Covenant against incumbrances and for quiet enjoyment—Local improvement rates.

Action in covenants in a deed of land whereby the defendants covenanted that he had done no act . . . whereby or by means whereof the lands . . . were, or should, or might be in anywise impeached, charged, or affected, or encumbered in title, estate, or otherwise howsoever, and that the grantee should enjoy them free from all incumbrances.

It appeared that a scheme of local improvement which resulted in the imposition of a fixed rate for 10 years to defray the expense of the improvement was undertaken at the instance and upon the petition of the defendants and other property holders interested under R.S.O. 1889, c. 184, s. 612, ss. 9.

The by-law creating the charge was passed before the conveyance to the plaintiff, although the precise sum to be paid by each parcel was not ascertained by apportionment till after the conveyance.

Held, affirming the decision of ROBERTSON, J., that the plaintiff was entitled to recover for breach of the covenants, and to be indemnified in full.

Per BOYD, C.—Different would be the conclusion if the taxes had been imposed by municipal authority without the intervention of the defendants.

Haverson for the defendants.

Ferguson for the plaintiff.

Practice.

Q. B. Div'l Ct.] [June 22.

FORD *v.* LANDED BANKING AND LOAN CO.

Administrator ad litem—Rule 311.

The plaintiff claimed from the defendants a