

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div

Div. Ct.]

[June 24.

NORMAN V. HOPE.

*Replevin—Action against sheriff for taking insufficient bond—Damages recoverable therein—R. S. O. c. 53, s. 11—R. S. O. c. 1, s. 8, subsec. 18.*

Judgment of ARMOUR, J., reported, 13 O. R. 556 affirmed.

Lash, Q.C., for the defendant.

Langton, for the plaintiffs.

rescinded and the deed delivered up to the chancellor.

*Held*, that there having been no actual fraud and the deed of conveyance having been executed, the plaintiff could not have the relief sought for.

*Wilde v. Gibson*, 1 H. L. C. 605, and *Brownlee v. Campbell*, 5 Ap. Cas. 925, *Holland, Hart v. Swaine*, 7 Chy. D. 42, considered.

McCarthy, Q.C., for the plaintiff.

Moss, Q.C., and Witherspoon, for the defendants.

Div. Ct.]

[July 5.

CAMERON V. CAMERON.

*Misrepresentation—Bona fides—Actual fraud—Conveyance executed—Rescission—Cancellation.*

H. D. C. agreed in writing with C. C. on January 17th, 1882, to sell to him Lots 37 and 39 for \$5,450, payable \$1,791 on the delivery of the deed and upon the title to Lot 37 being found satisfactory to C. C. or his solicitor, and upon a quit claim deed of Lot 39 being delivered, the balance to be secured by mortgage, said sale to be completed within thirty days, otherwise the deposit of \$25 to be forfeited. H. D. C. *bona fide* believing such to be the case, represented to C. C. at the time of the sale that a patent from the Crown had issued for Lot 37, and relying on this representation H. D. C. entered into the agreement, and afterwards verbally agreed to sell Lot 37 at a large advance to one R. On February 10th, 1882, the conveyance was executed, the bulk of the purchase money, \$4,025, having been paid prior thereto in cash, a promissory note being taken for the balance in lieu of a mortgage. It afterwards appeared that no patent had ever issued for Lot 37, and notwithstanding the efforts of H. D. C. and C. C. it was not till April 25th, 1883, that the department at length issued a patent, and then, only for four chains of the lot, leaving ninety links outstanding. In February, 1883, H. D. C. had told C. C. that he would not keep the property, that by reason of no patent having issued R. had withdrawn from his offer, and he demanded his money back with his actual expenses incurred. C. C. refused to cancel the sale, and H. D. C. now took these proceedings to have the sale

Div. Ct.]

[July 5.

REGINA V. BRIERLY.

*Bigamy—R. S. C. c. 161, s. 4.—Second marriage contracted abroad by British subject resident in Canada—Ultra vires—Evidence—Proof of foreign law—Proof of second marriage.*

*Held*, that R. S. C. c. 161, s. 4, which enacts that every one who, being married, marries any other person during the life of the former husband or wife, whether the second marriage takes place in Canada or elsewhere, is guilty of felony, provided that the person who contracts such second marriage is a subject of Her Majesty, resident in Canada, and leaving the same with intent to commit the offence, is not *ultra vires* the Dominion Legislature, either as being repugnant to Imperial legislation or on any other grounds.

*Per Boyd, C.*—This statutory law is nearly half a century old, it has been confirmed by the courts, passed upon more than once by competent colonial legislatures, and ratified by the express sanction of the Imperial Parliament, and Her Majesty in person.

In order to prove the second marriage which took place in Michigan, the evidence of the officiating minister was tendered, who showed that during the last twenty-five years he had solemnized hundreds of marriages; that he was a minister of the Methodist Church; that he understood the laws of Michigan relating to marriage; that he had been all the while resident in Michigan; that he had communications with the Secretary of State regarding these laws; and that this so-called second marriage was solemnized by him in