

Sup. Ct.]

NOTES OF CANADIAN CASES.

[Sup. Ct.]

The partnership having become insolvent, the assignee sought to hold the coal as the goods of the insolvents, and filed a bill impeaching the validity of the receipt. The Chancellor who tried the case found that the receipt given was a valid receipt within the provisions of the Banking Act, and was given by a warehouseman, and that the bank was entitled to hold all the coal in store of the description named in the receipt. This judgment was reversed by the Court of Appeal for Ontario, and on appeal to the Supreme Court of Canada it was

Held, reversing the judgment of the Court of Appeal,

1. That it is not necessary to the validity of the claim of a bank under a warehouse receipt that the receipt should reach the hands of the bank by indorsement, and that the receipt given by W. S. in this case was a receipt within the meaning of 34 Vict. ch. 5 (D).

2. (RITCHIE, C. J. and STRONG, J. dissenting) that the finding of the Chancellor as to the fact of W. Snarr being a person authorized by the statute to give the receipt in question, should not have been reversed as there was evidence that W. S. was a wharfinger and warehouseman.

3. *Per* FOURNIER, HENRY and TASCHEREAU, JJ.—That the provisions of 34 Vict. ch. 5 (D), as to warehouse receipts do not invade the functions of the Provincial Legislature by an interference with property and civil rights in the Province.

C. Robinson, Q.C., for appellants.

MacLennan, for respondent.

GLOUCESTER ELECTION PETITION.

COMMEAU V. BURNS.

Appeal on Election Petition—The Supreme and Exchequer Court Amendment Act of 1879, sec. 10—Construction of Rule Nisi by petitioners to rescind order of a judge in Chambers made absolute by Court in banc not a preliminary objection.

A petition was duly filed and presented by appellant on the 5th August, 1882, under the "Dominion Controverted Elections Act, 1874," against the return of respondent. Preliminary objections were filed by respondent, and before

the same came on for hearing the attorney and agent of respondent applied to, and obtained on the 13th October, from Mr. Justice Weldon, an order authorizing the withdrawal of the deposit money and removal of the petition off the files. This money was withdrawn, but shortly afterwards in January, 1883, appellant, alleging he had had no knowledge of the proceedings taken by his agent and attorney, obtained upon summons a second order from Mr. Justice Weldon rescinding his prior order of 13th October, 1882, and directing that upon the appellant re-paying to the clerk of the court, the amount of the security in petition be restored, and that the appellant be at liberty to proceed against the order appealed to the Supreme Court of New Brunswick, and the Court gave judgment rescinding Mr. Justice Weldon's order made in January, 1883. Thereupon petitioner appealed to the Supreme Court of Canada.

Held, that the judgment appealed from is not a judgment on a preliminary objection within the meaning of 42 Vict. ch. 39, sec. 10, and therefore not appealable.

Dickie and Woodworth followed.

Blair, Q.C., for appellant.

R. Harrison, for respondent.

WORTHINGTON ET AL V. MACDONALD.

Articles of partnership, Construction of—Estimatio facit venditionem.

This was an appeal from a judgment of the Court of Appeal for Ontario decreeing that the respondent was entitled to be credited in the winding up of the partnership between respondent and appellant with the sum of \$40,000, the estimated value of certain plant, etc., used in the construction of the works done by the partnership. The article in the deed of partnership executed before a notary public in the Province of Quebec, under which the respondent claimed to be entitled to the said credit of \$40,000, is as follows:—

"The stock of the said partnership consists of the whole of the plant, tools, horses, and appliances now, and for the construction of said works, by the said party of the first part; also all quarries, steam tugs, scows; and also all the rights in said quarries that are held by