

Province of Nova Scotia.

SUPREME COURT.

Full Court.]

[Jan. 11

BANQUE D'HOCHELAGA v. MARITIME RY. NEWS CO.

*Partnership—Service of writ after dissolution.*

Appeal from the decision of GRAHAM, J., at Chambers, deciding that service on one or more partners of a dissolved firm is good service on all the partners of the firm where plaintiff had no knowledge of the dissolution. On appeal to the Court :

*Held*, following the dictum of CHITTY, J., in *Shepherd v. Hirsch*, 45 Ch. Div., p. 244, that the service on one or more partners was good service on all partners, although the firm had been dissolved, if plaintiffs had no knowledge of the dissolution.

C. H. Cahan, for plaintiffs. J. A. Chisholm, contra.

Full Court.]

WEATHERBEE v. WHITNEY.

[Jan. 11.

*Affidavit for capias—Lands sold—Action for price.*

This was an appeal from an order made in chambers by RITCHIE, J., setting aside an order for arrest. The affidavit of the plaintiff upon which the order for arrest was made stated that he had sold to the defendant certain mining areas for a stated price, and a further paragraph in said affidavit set forth an agreement for the sale of said areas, and that the plaintiff had performed his part of the agreement, and that the price agreed upon was due from the defendant to the plaintiff. On the application before RITCHIE, J., the defendants produced affidavits contradicting all the material allegations in plaintiff's affidavit. On appeal

*Held*, that it appearing from the affidavits that the title to the mining areas had not passed from the plaintiff to the defendant, the plaintiff could maintain only an action for damages and not an action for the price : *Laird v. Pinn*, 7 M. & W. 474. Appeal dismissed with costs.

Ritchie, Q.C., and J. A. Chisholm, for plaintiff. Ross, Q.C., and H. Mellish, for defendant.

McDonald, C. J., Townshend, J. }

Graham, E. J }

PIPER v. KINGS' CURE CO.

[Jan. 11.

*Setting aside judgment for default of plea—Sufficiency of affidavit—Discretion of Judge—Defence sent by mail—Miscarriage of.*

By agreement between solicitors defendant was allowed further time, expiring July 6th, 1897, for putting in the defence. On July 2nd, 1897, the defence was mailed to the agents of the defendant company's solicitors at Bridgetown, and in the ordinary course should have reached them in time to file and serve on the following day, but through a miscarriage in the mails did not reach them until after judgment had been entered for default of plea.