

Q. B.]

NOTES OF CASES.

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quor without license under R. S. O., ch. 181, s. 51, and appealed to the Sessions, which dismissed the appeal on the ground that under sec. 71, it should have been made to the county judge in chambers, without a jury. *Held*, refusing an application for a mandamus to compel the Sessions to try appeal, on the ground that sec. 71, of R. S. O., ch. 181, was *ultra vires* the Ontario legislature, that R. S. O. ch. 75 and ch. 181, sec. 71, constituted the County Judge, sitting in chambers without a jury, a Court of Appeal in such cases, within the meaning of 40 Vic. ch. 27, D.

Blackstock, for the applicant.

Fenton, *contra*.

BURNHAM V. HALL, SHERIFF.

Action for not arresting under attachment—Tender by Sheriff under attachment—Pleading.

Held, that an action lies against a sheriff for not arresting an attorney against whom an attachment has issued for not handing over, pursuant to order, all deeds, books, papers, &c., in his custody belonging to plaintiff; and that a plea, which stated that on delivery of the attachment to defendant, the attorney delivered to him all deeds, &c., to be by defendant delivered to plaintiff, in pursuance of the order for contempt on which the attachment issued, and that long before the return day, defendant tendered them to plaintiff's attorney who refused to accept them, and that defendant was at all times ready to deliver them to plaintiff, was bad; for that, besides being hardly an answer to one of the counts of the declaration, which was for falsely returning that the attorney could not be found, a statement that the attorney delivered to defendant all deeds, &c., in his custody, might be true as to those then in his hands, and yet not as to all within the scope of the order and attachment; but that plaintiff was entitled to have the body in Court and to get discovery of all deeds, &c.

H. Cameron, Q. C., for plaintiff.

C. Robinson, Q. C., *contra*.

MCDONALD V. McDONALD ET AL.

Deed—Delivery—Purchase for value without notice—Registry laws.

One M. prepared a deed of the land in question, professing to be executed in plaintiff's favour, and delivered by him and requested one C. to witness his execution of it, which C. did. He then sent for one V. and procured C. to swear to the affidavit of execution before V. in the usual form for registry. Subsequently, in a moment of anger, M. tore up the deed, the pieces of which plaintiff subsequently collected and stitched together.

Held, that the deed was executed and delivered, so as to vest the land in plaintiff.

After tearing up the deed, M. willed one half of the land to his nephew, and the remaining half to others, and the nephew conveyed the whole lot to a purchaser for value, without notice, both will and deed to this purchaser being registered before the plaintiff's deed. *Held*, that the registration of the will and of the conveyance, prevailed over plaintiff's unregistered deed, as to the moiety conveyed by the nephew; but that plaintiff's deed having been subsequently registered and no conveyance appearing to have been executed or registered of the other moiety devised, plaintiff was entitled to hold this moiety under the deed from M.

H. J. Scott, for plaintiff.

Ferguson, Q. C., *contra*.

THE CORPORATION OF CHATHAM V. CORPORATION OF SOMBRA.

Drainage Works—R. S. O. ch. 174, ss. 535, 539, 540.

Where drainage works have been proceeded with under R. S. O., ch. 174, sec. 535, *et seq.*, report made, appealed from and arbitration held, the township to be benefitted must pass a by-law under sec. 250, to raise the sum awarded against them, and cannot refuse payment until the work is completed.

There is no remedy provided by the Act for the case of improperly or insufficiently executed drainage work.

McMichael, Q. C., for plaintiffs.

Falconbridge, *contra*.