

Province of New Brunswick.

SUPREME COURT.

BARKER, J., }
In Equity. }

[Dec. 19, 1896.]

MOREHOUSE v. BAILEY.

Practice—Injunction—Undertaking as to damages—Dismissal of bill.

A plaintiff had obtained an ex parte injunction on giving an undertaking as to damages. The injunction was afterwards dissolved.

Held, that the defendant can proceed under the undertaking and have damages assessed after bill dismissed; the undertaking not being a proceeding in the suit can be acted on after suit dismissed.

Wilson, for plaintiff.

Bliss, for defendant.

[Please cancel note of this case on p. 88, and read this instead.—Ed. C.L.J.]

VANWART, J. }
In Chambers. }

Feb. 2.

SCHOFIELD v. CROCKET.

Justices' Court—Con. Stat., c. 60, s. 25—Power of justice to adjourn court—Promissory note—Bills of Exchange Act, s. 59, sub-sec. (a).

This was a review from City of Fredericton Civil Court, on the grounds (1) that the plaintiffs could not maintain an action on the draft which had been drawn by them upon the defendant requesting him to pay the amount to the Merchants Bank of Halifax or order, and duly accepted by defendant but not paid, without the draft being indorsed to the plaintiffs; (2) that the Justice adjourned his Court from the 10th to 12th November at the request of counsel of the plaintiffs, without any affidavit as required by law, and thereby lost jurisdiction in the case.

Held, that the words of the Bills of Exchange Act, 1890, s. 59, sub-sec. (a), are intended to meet such a case. *Simmonds v. Parmenter*, 1 Wils. 185, followed.

Held, also that the authority of the Justice to grant adjournments is regulated by Con. Stat., c. 60, s. 25, which enacts, "a justice may adjourn his Court from day to day if necessary to finish the business before the Court; he may also, for the absence of material and necessary witnesses or other good reason, when made to appear on affidavit, adjourn the hearing of a case till a day later than the day succeeding." The learned Judge said: "I think, independently of the statute, a justice would have power to adjourn his Court from day to day to enable him to finish the business of his Court. It is a common law right, inherent in the Court. There is, however, legislation (Con. Stat., c. 118), which enacts that 'authority to a justice of any Court to do an act, shall empower any other justice of the same Court to act in his stead when necessary, and authority to hear shall include power from time to time to adjourn.' Entertaining some doubt about the effect of the provision, I have consulted