

C. L. Cham.] MITCHELL v. MULHOLLAND—ANGERS v. QUEEN INSURANCE CO. [Quebec Rep.]

of his death, the patent lay unsealed in his room ; and it is said that some officious friends wished to apply the seal to it during his life, but were prevented by Lord Hardwicke, his brother. A closer analogy to the case of Mr. Thesiger will be found in that of Thomas Erskine, judge of the Common Pleas, who was the son of Lord Chancellor Erskine, the famous advocate. The instances of the son of a Lord Chancellor attaining the bench are, of course, not numerous ; but cases of judges' sons becoming judges are common enough to warrant the foundation of general principles upon them. — *Law Journal*.

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COMMON LAW CHAMBERS.

(Reported for the *Law Journal* by H. T. BECK, M. A.
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MITCHELL v. MULHOLLAND.

Prohibition—Division Courts—New trial.

Held, that Con. Stat. U. C., cap. 19, sec. 107, giving the judge power to grant a new trial within fourteen days is imperative, and that the judge has no power to grant a new trial after the expiration of fourteen days,

[December 1, 1877—MORRISON, J.]

This case, which was an application for a writ of prohibition, to prohibit a Division Court judge from granting a new trial after the expiration of fourteen days, and which is reported *ante infra*, vol. xiii., p. 224, was reconsidered by the learned judge, no order having issued discharging the summons.

D. B. Read, Q.C., in support of the application for a writ of prohibition.

The judge may order a new trial upon the application of either party within fourteen days after the trial : Con. Stat U. C., cap. 19, sec. 107. By sec. 63 of same statute the Governor may appoint judges to frame rules, and by sec. 66 the rules and forms so approved of shall have the same force and effect as if they had been made and included in this Act. By Division Court Rule No. 52, an application for a new trial may be made, and the application and affidavits (if any), together with an affida-

vit of service thereof shall be delivered to the Clerk within fourteen days after the day of trial. see *Re Applebee v. Baker*, 27 U. C. R., 486. The word *shall*, in above Rule 52, having the same force as the Division Court Act itself, would seem to make the Act imperative that the application for new trial should be made within fourteen days : see *Davidson v. Gill*, 1 East, 64. As to the construction of the word "upon," see sec. 107 referred to, and *Reg. v. Humphrey*, 10 A. & E., 335. He also cited *Dwarris on Statutes*, 662, 611, and *Mossop v. Great Northern R. Co.* 16 C. B., 580. When an applicant is entitled to the writ, the Court will give it, notwithstanding the smallness of the claim, as a matter of right : see *Worthington v. Jeffries*, L. R. 10 C. P., 379, and *Elston v. Rose*, L. R. 4 Q. B., 4.

MORRISON, J. after taking time to consider, held that the judge had no power to grant a new trial after the expiration of the fourteen days from the first trial. He therefore granted an order for a writ of prohibition to issue.

Order accordingly.

QUEBEC.

COURT OF QUEEN'S BENCH—APPEAL SIDE.*

ANGERS, Appellant, v. THE QUEEN INSURANCE Co., Respondents.

Powers of Local Legislatures—Stamp duty on Insurance Policies—Quebec Statute, 39 Vict. c. 7.

Held, (affirming the judgment of the Superior Court, 21 L. C. J. 77) that the Quebec Statute, 39 Vict. c. 7, requiring insurance companies doing business in the Province of Quebec to take out a license, the price of which should be paid by stamps affixed to the policies issued, is unconstitutional.

[MONTREAL, Dec. 14, 1877.]

The Legislature of Quebec passed an Act, 39 Vict. c. 7, requiring insurance companies doing business in the Province of Quebec to take out a license, the price of which should consist in the payment to the Crown for the use of the Province of a percentage on premiums, and the percentage was made payable by stamps affixed to the policies issued. The right to impose this tax being denied by the companies, the present action was instituted as a test case by the Attorney General of the Province, on be-

* *Before* :—Chief Justice DORION, and Justices MONK, RAMSAY, TESSIER, and TASCHEREAU *ad hoc*.