

COMMON PLEAS DIVISION.

IN BANCO, DECEMBER 29TH, 1882.

LONDON LOAN CO. V. SMITH.

*Mortgage—Absence of covenant to repay—
Evidence of debt.*

Held, that a mortgage which contains no covenant for repayment of the consideration money does not of itself afford evidence of a debt

Gibbon, (of London), for the plaintiff,*Meredith*, Q.C., for the defendant.

MCGREGOR V. MCNEIL.

*Agreement to cut timber—Chattels—Right to
remove after time limited.*

Under an agreement, dated 2nd October, 1880, the defendant sold to B. all the pine timber growing on certain land, to be removed during the years 1880 and 1881. The timber was all cut into logs before the end of 1881, but a portion was not then removed.

Held, that this was a sale of goods and chattels, and not of an interest in land, and the timber so cut, being the plaintiff's property, he had the right to remove it after the expiration of the time mentioned.

R. Martin, Q.C., for the plaintiff.*Lount*, Q.C., for the defendant.

DOYLE V. BELL.

Dominion elections—Civil remedy—Ultra vires.

Held, that sec. 109 of the Dominion Election Act, 37 Vict. ch. 9, which gives a civil remedy for the recovery of the penalties imposed for the offences committed against sec. 92 of the Act, namely, bribery, etc., was not *ultra vires* of the Dominion Parliament.

Osler, Q.C., for the plaintiff.*Bethune*, Q.C., for the defendant.

UNION INSURANCE COMPANY V. FITZSIMMONS.

UNION INSURANCE COMPANY V. SHIELDS.

*Calls—Notice—Evidence of—Delivery of—Mailing—Stockholder—Company—Winding up—
Right to sue.*

Actions for calls. The 37 Vict., c. 93, sec. 7, under the authority of which the calls in question were made, provided that no call should be less than 10 per cent., and 30 days notice should be

given of every such call. The resolution passed for giving the call, was passed on the 3rd August, 1881, the call to be payable on Tuesday, September 6th.

In the first named case the defendant lived in Ottawa. On Friday, August 5th, notice in proper form was mailed at Toronto, properly addressed to defendant at Ottawa, which in due course of post would reach Ottawa office at 7 p.m. On Saturday evening the office closed at 7.30, and unless by personal application to the post master the letter would not be delivered until the Monday following, August 8th, when it was as a fact delivered.

Held, (WILSON, C.J., doubting,) that under the statute the delivery of the notice must be deemed to be made from the mailing, and therefore the notice was good.

In the last named case the objection was that the defendant was not a stockholder, because that the stock had become vested in his assignee in insolvency; and also that the defendant had not received notice of the call. It appeared that the stock had never been returned by the defendant to the assignee as part of his assets, that the assignee had never accepted it, and that the defendant had subsequently received a dividend on it. It also appeared that the notices were sent to the assignee, and that he directed his book-keeper to forward them to defendant, which he stated he did; while the plaintiff's manager stated, that, after the call was made, he spoke to the defendant about it, and he promised to pay it. The defendant denied having received notice, and the conversation with the manager.

Held, on the evidence, that the defendant was still a stockholder, and that he must be deemed to have had notice.

In both the above cases it was objected that there was no power to sue, because that the company's license had, under 42 Vict., c. 25, been revoked; but it was shewn that one B. had been duly appointed receiver, and was specially required, by the order of the Chancery Division, to prosecute all members in arrears for calls, and that he had adopted these actions and was prosecuting them as receiver. The objection was therefore held not to be tenable.

Frank Hodgins, for the plaintiffs.*Biggar*, for the defendant Fitzsimmons.*Falconbridge*, for defendant Shields.