

Q. B.]

NOTES OF CASES.

[C. P.]

parties, and why the former should not be appointed under the ninth section of the A. J. Act, to represent the estate of the defendant on this motion, and on all subsequent proceedings in the reference—the rule to be returnable after fourteen days notice before a single judge.

*Snelling* for the plaintiff.

GLENCHESS, ASSIGNEE, v. CONSOLIDATED BANK.

*Insolvency—Banking account—Transfer of moneys by assignee from estate to separate account—Liability of bank to reimburse.*

One McE., who was the assignee of an Insolvent's estate, kept the estate account as well as his private account at the defendants' bank. Certain notes belonging to the estate were in McE.'s hands, as such assignee, and were deposited with the defendants for collection, and the proceeds placed to the credit of the estate, but which McE. drew out by cheque as assignee, and then deposited to his private account, and they were used for his private purposes. McE. then absconded, and the plaintiff was appointed assignee of the estate in his place. In an action against the defendants to recover the amounts of the said notes,

*Held*, that he could not recover for debt; the defendants were under no liability to reimburse the estate with the said amounts.

*J. K. Kerr*, Q.C., for the plaintiff.

*J. A. Miller*, for the defendants.

COMMON PLEAS.

IN BANCO.—JUNE 25.

PEAK v. SHIELDS.

*Sec. 136 of Insolvent Act—Crimes—Civil procedure—Right of Parliament of Canada to enact.*

*Held*, that the acts referred to in sec. 136 of the Insolvent Act are not by that section constituted crimes, punishable as such under that and the following sections.

*Held*, also, that the right of the Provincial Legislature to direct the civil procedure in the Provincial Courts has reference to the procedure over which the Legislature

has power to give those Courts jurisdiction, and does not in any way interfere with or restrict the right or power of the Parliament of Canada to direct the procedure to be adopted in cases over which Parliament has jurisdiction.

*J. E. Rose* and *T. F. Blackstock*, for the plaintiff.

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

GILDERSLEEVE v. McDUGALL,

*Contracts—Cause of action—R. S. O. ch. 50, sec. 49.*

On 19th March, [1879, plaintiff, at Kingston, Ont., wrote to defendant at Montreal, "Please state price for forging, for cross-head for beam engine, steamer 'Hastings' (36 inch cylinder, diameter), to be finished here; very best material; telegraph me to-morrow." On the 20th, the defendant telegraphed in reply, "Will forge cross-head at seven cents per pound." On the same day the plaintiff replied by letter, "I am in receipt of your telegram in answer to mine, saying you will forge cross-head at seven cents per pound, and enclose drawing which explains itself. Please leave metal enough to finish up to the sizes in the drawing, and ship them here as soon as finished by G. T. R." On 22nd March, defendant replied by letter as follows: "Yours of 20th duly to hand, with sketch of cross-head enclosed. The same will have immediate attention, and as soon as ready I will ship to your address."

*Held*, that the plaintiff's letter of the 19th March and the defendant's telegram in reply comprises merely an enquiry and answer; and that the whole contract was contained in the plaintiff's telegram of the 20th March and the defendant's letter in reply accepting the order therein contained, and that the contract must be deemed to have been made at Montreal, where the final assent was given.

The expression "cause of action," in sec. 49 of the C. L. P. Act, R. S. O. ch. 50, does not mean the whole cause of action, namely the contract and breach, but the act on the part of defendant which gives plaintiff his cause of complaint.

In this case the cause of action was the