

Ct. Ap.]

NOTES OF CANADIAN CASES.

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only required when a suit otherwise of the proper competence of the Divisional Court has been brought in the wrong Division, and the want of such notice cannot give the Divisional Court jurisdiction if the title to land is brought in question.

#### MILLER V. CONFEDERATION.

The refusal of the court below to order a new trial by reason of disagreement of the judges (11 O. R. 120) was affirmed.

HAGARTY, C.J.O., *hesitante* as to granting a new trial, on the ground of the discovery of fresh evidence.

#### GRAY V DUNDAS.

The judgment in the court below, reported 11 O. R. 317, was unanimously affirmed by this court, and the appeal therefrom dismissed with costs.

#### KNIGHT V. MEDORA.

The judgment of the Q. B. D., reported 11 O. R. 138, was, on appeal to the court, unanimously affirmed, and the appeal therefrom dismissed with costs.

From Boyd, C.]

#### MITCHELL V. GORMLEY.

*Per hip*—Sale by partner of undivided share.

The plaintiff and defendant jointly purchased land with the object of selling it again at a profit, the plaintiff having an undivided one-third interest, and the defendant the remaining two-thirds.

The defendant formed a syndicate of eight persons, of whom he himself was one, to which he turned over his two-thirds interest at a profit. There was no agreement between plaintiff and defendant restraining either from disposing of his share.

*Held*, affirming the judgment of BOYD, C., that assuming the plaintiff and defendant to have been partners as dealers in real estate bought on speculation to be sold at a profit, no part of the partnership property had been alienated or taken from the purposes of the partnership; and, therefore, the plaintiff was not entitled to participate in the profit made by the defendant on the sale of his undivided share.

#### DICKEY V. McCAUL.

*Sale of goods—Conversion.*

The defendant could not be held liable for a conversion of the goods in question by reason of his having joined in a bill of sale of them, and having accepted and assigned a mortgage for the balance of the purchase money thereof, no other act of interference with them on his part being shown, they never having been in his possession or control, and he never having had the power to deliver up or retain them, so as to make a demand upon him and refusal by him evidence of conversion, he having acted in the sale of the goods only as the agent and by the authority of another.

The plaintiff, J. I. D., could not maintain an action for the conversion of the property in question; for, assuming that it was the property of those under whom he claimed, which was one of the matters in controversy, it did not become vested in him till after the alleged conversion. Nor could the plaintiff, J. D., maintain the action, he never having had the actual possession of the property, but a mere right as receiver appointed by the court to obtain the custody of it, if it belonged to those whom he represented, which would not support the action, though it might form the ground of a special application to the court for a mandamus, or attachment, or other appropriate relief.