

lots of 15 or 20, of \$3 each lamb, to dress not less than ten pounds per quarter—price of cattle, \$3.50; weighed at Port Arthur."

Nothing was said as to time of payment.

Held (reversing Armour, J.), that the price was not payable till completion of whole contract, and that the refusal of the defendant to pay for the part delivered did not justify the plaintiff in refusing to deliver the remainder.

Per FERGUSON, J.—The contract being entire, and containing no stipulation regarding the manner or time of payment, the defendant was entitled to refuse to pay for the part that had been delivered until the remainder should be delivered, and the refusal of the plaintiff to deliver the remainder was not justified, and was a breach of the contract.

Per BOYD, C.—If the contract is entire the price was not payable until all the deliveries were completed; if it is divisible *quoad* the cattle and the lambs, so as to be in effect two contracts, the failure to pay for the cattle by the one party would not excuse the other in not forwarding the lambs within the time limited. When there has been partial delivery and consumption of that part, and failure to perform the rest of the contract, the seller has the right to sue as upon a *quantum meruit*, and the purchaser has his cross-action or counter-claim for damages, and such is the position of affairs in this case.

Withers v. Reynolds, Q. B. & Ad. 882, considered and distinguished.

Aylesworth, for the appeal.

D. Morrison, contra.

Practice.

Q. B. Divisional Court.] [Mar. 9.]

In re JOHNSON *v.* THERRIEN.

Prohibition—Division Court judgment against garnishee—Proof of amount due—49 Vict. c. 15, s. 12—Money paid into court.

Held, reversing the decision of STREET, J., in Chambers, that the judge of a Division Court has no jurisdiction to give judgment against a garnishee without proof of the amount owing by the garnishee to the judgment debtor, and for such a course prohibition will lie.

There is nothing in the sub-section substituted by 49 Vict. c. 15, s. 12, for R. S. O. (1877) c. 47, s. 136, s. 2, which repeals the condition precedent in s. 132, to the judge's giving judgment against the garnishee.

Held, also, that, if necessary, the writ of prohibition should go to compel the repayment to the garnishee of money paid by him into the Division Court.

J. H. Ferguson, for the garnishee.

No one contra.

C. P. Divisional Court.] [Mar. 10.]

WELLBANKS *v.* CONGER.

Costs—Certificate for—Action for libel—Nominal damages—Cause for depriving successful party of costs.

Where in an action of libel the plaintiff obtained a verdict for twenty cents damages.

Held, that no certificate or order for full costs was necessary, and that the plaintiff could be deprived of such costs for good cause only.

Wilson v. Roberts, 11. P. R. 412, followed.

The court cannot look behind or beyond the finding of the jury as to the right of a party to recover a verdict, and therefore the cause here alleged for depriving the plaintiff of costs, viz., that he was really not entitled to recover, as shown by the result of a trial of substantially the same issues before another forum, was not to be regarded.

Ritchie, Q. C., for the plaintiff.

W. H. P. Clement, for the defendant.

C. P. Divisional Court.] [Mar. 10.]

In re McLEOD *v.* EMIGH.

Prohibition—Division Court—Married woman—Examination and committal as judgment debtor—Indorsement on judgment summons.

A judgment against a married woman by virtue of the Married Woman's Property Act, creates no general personal liability, but merely charges her separate estate; and the provisions of s. 177 of the Division Courts Act, R. S. O. (1877), c. 47, as amended by 43 Vict. c. 8, touching the examination of judgment debtors,