

The Court of Appeal cannot impose upon a suitor conditions upon which he shall be allowed to appeal to this Court.

Appeal dismissed with costs.

Foy, Q.C., for the appellant.

Aylesworth for the respondent.

[June 12.]

SHOOLBRED v. CLARK.

*Winding-up Act—R.S.C., c. 129—Application of to Provincial Company—Winding-up proceedings—Reference to master.*

The Union Fire Insurance Co. was incorporated by the Ontario Legislature, and having become insolvent an assignee was appointed to settle its affairs under the Insolvent Act of 1875. When the Winding-up Act was passed a petition was presented to the Court to have the company wound up under its provisions and a winding-up order was made which was set aside by the Supreme Court of Canada (14 Can., S.C. R. 642). A second winding-up order having been made and confirmed by the Court of Appeal, a second appeal was had to the Supreme Court by S., a shareholder.

*Held*, affirming the judgment of the Court of Appeal (16 Ont. App. R., 161) and that of the Chancellor (14 O. R., 618) that notwithstanding the company was incorporated by the Provincial Legislature, it could be put into compulsory liquidation and wound up under the Dominion Winding-up Act, R.S.C., c. 129.

*Held*, also, that the powers assigned to Provincial Courts or judges by the Winding-up Act are to be exercised by means of the ordinary machinery of the courts and their ordinary procedure. It was therefore no ground of objection to the winding-up order in this case that it was referred to a Master to settle the security to be given by the liquidator appointed therein.

Appeal dismissed with costs.

S. H. Blake, Q.C. and McLean for the appellant.

Bain, Q.C., for the respondents.

[June 12.]

TURNER v. PREVOST.

*Statute of frauds—Contract relating to interest in land—Part performance.*

B., a resident of British Columbia, wrote to his sister in England that he would like one of her children to come out to him, and in a second letter he said, "I want to get some relation

here, for what property I have, in case of sudden death, would be eat up by outsiders and my relations would get nothing." On hearing the contents of these letters, T., a son of B.'s sister and a coal miner in England, came to British Columbia and lived with B. for six years. All that time he worked on B.'s farm and received a share of the profits. After that he went to work in a coal mine, Idaho. While there he received a letter from B. containing the following:—"I want you to come at once as I am very bad. I really do not know if I shall get over it or not and you had better hurry up and come to me at once, for I want you and I dare say you will guess the reason why. If anything should happen to me you are the person who should be here." On receipt of this letter T. immediately started for the farm, but B. had died and was buried before he reached it. After his return he received the following telegram which had not reached him before he left for home: "Come at once if you wish to see me alive, property is yours, answer immediately. (Sgd.) B." Under these circumstances T. claimed the farm and stock of B., and brought an alleged agreement by B. that the same should belong to him at B.'s death.

*Held*, affirming the judgment of the Court below, that as there was no agreement in writing for the transfer of the property to T., and the facts shown were not sufficient to constitute a part performance of such agreement, the fourth section of the Statute of Frauds was not complied with and no performance of the contract could be decreed.

Appeal dismissed with costs.

S. H. Blake, Q.C., for the appellant.

Moss, Q.C., for respondent Power.

McCarthy, Q.C., and A. F. McIntyre for other respondents.

[June 13.]

POWER v. MEAGHER.

*Trustees—Commission to—Rule of Law.*

Prior to the passing of the Nova Scotia Statute 51 Vict. c. II. sec. 69, there was no statutory authority for trustees to receive commission for their services when none was provided for by the instrument creating the trust. In a case which did not come within the statute

*Held*, reversing the judgment of the Supreme Court of Nova Scotia (21 N. S. Reports, 184), that the English rule of law prohibiting such