

Province of New Brunswick.

SUPREME COURT.

Full Bench.]

PRESCOTT v. GARLAND.

[April 27.]

Promissory note or agreement.

Held, that the following instrument was not a promissory note, and could be sued on only as an agreement :

"On the first day of August, 1896, for value received, I promise to pay to C. D. Prescott or order \$16, payable at the office of W. A. Trueman, here, with 7 per cent. interest from date until paid. Should I sell or otherwise dispose of my land or personal property, then this note to become due and payable forthwith. This note is given as security for part-payment for price on B. S. Nickle harness, and as expressly agreed title of same shall remain in G. D. Prescott until note is paid, and that said harness in the meantime is only on hire until paid for. On any default of payment to go as rent. You may retake possession of property without process of law, and sell it to pay unpaid balance, whether due or not, but taking and selling of said property shall not relieve me of my liability for any balance on purchase price still unpaid after last sale.—Stephen Garland."

The following cases were cited :

Dominion Bank v. Wiggins, 21 A. R. 275 ; *McIntyre v. Crossley*, (1896) Appeals, 457 ; *Hartness v. Russell*, 118 U. S., 663 ; *Chicago Ry. Co. v. Merchants National Bank*, 136 U. S., 268 ; *Heryford v. Davies*, 102 U. S., 235.

Held, also, that a Justice of the Peace or Parish Court Commissioner had no jurisdiction to try an action on the agreement.

M. G. Teed, for defendant.

Pugsley, Q.C., A. W. MacRae and W. A. Trueman, for plaintiff.

Full Court.]

BROCK v. FORSTER.

[April 27.]

Notice by mortgagee to lessee of mortgagor—Whether an adoption of the lease under s. 15, c. 83, Con. Stat.

A party after mortgaging his lands made a lease of the premises for a term of years to the defendant. Subsequently the mortgagees through their agents gave notice to the defendant to pay rent to them in the following terms :

"On behalf of the Misses Maria and Louise E. Street, the mortgagees of the Far Marsh, formerly a part of the estate of the late Wm. J. Gilbert, we beg to notify you as lessee that all rent payable by you under your lease must be paid at our office as agents, and not elsewhere."

The mortgagor conveyed his equity of redemption to the plaintiff, and the mortgagees subsequently countermanded the above notice. The plaintiff afterwards brought the present action to recover rent, and the defendant relied upon the aforementioned notice as an adoption by the mortgagees of his lease under above statute, by virtue of which he had become tenant of the said mortgagees.