

The plaintiff also alleged that at a certain city, in a certain month and year, the defendant falsely and maliciously spoke and published of the plaintiff certain specified words.

Held, that the defendant was entitled to some particulars as to the times when and the places where, the defamatory words were used, and as to some of the persons in whose hearing they were alleged to have been spoken.

Winnett v. Appelbe, 16 P.R. 57, distinguished.

Held, also, that the plaintiff, before delivering particulars, should have leave to examine the defendant, in order to enable him to furnish them.

W. H. Douglas, for the plaintiff.

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

FERGUSON, J.]

[Feb. 27.]

CHISHOLM v. LONDON & WESTERN TRUSTS CO.

Alienation—Restriction against—Validity of.

A testator after devising two parcels of land to his two sons provided as follows: "I will that the aforesaid parcels of land shall not be at their disposal at any time until the end of ten years from the date of my decease. And further I will that the same parcels of land shall remain free from all encumbrances, and that no debts contracted by my sons W. C. and H. C. shall by any means encumber the same during twenty-five years from the date of my decease."

Held, a good and valid restriction so far as it is a restriction against selling and conveying the lands or encumbering them by way of mortgage.

Decisions of our own Courts followed in preference to English cases.

Hypothetical question not answered.

A. B. Cox, for the plaintiff.

M. D. Fraser, for the defendants.

ARMOUR, C. J., FALCONBRIDGE, J.,
STREET, J. }

[March 11.]

ELMSLEY v. HARRISON.

Amendment—Pleading—New case made at the trial—Statute of Frauds.

In an action by a lessor against an assignee of the lease, brought after the expiry of the lease, to recover possession of the demised premises and for cancellation of the lease and for relief from any claim of the defendant for renewal under a covenant in that behalf, the defendant set up in his defence the covenant to renew and alleged that he and the plaintiff had never been able to agree upon a new rent, but that he had always been ready and willing to have it fixed by arbitration, as required by the lease, and had since action notified the plaintiff of the appointment of an arbitrator. In reply the plaintiff alleged that the defendant had made a written offer to renew at a named rental; that the plaintiff had accepted the offer; but that the defendant had not carried out the arrangement so made. There was no further pleading. At the trial the evidence showed a written offer made by the defendant, but