exist in favour of the Bank, as *bona fide* holder. The composition covered this claim and the assignee only transferred the estate on receiving the indorsement of the defendants McLachlan & Co. That indorsement is valueless in favour of Fraser, but why should it not be good in favour of the Bank? On every consideration of equity it should hold good in favour of the Bank. The demand of the Bank, therefore, that the amount of the composition for 35 cents, so far as their four notes are concerned, should be transferred from Fraser to them, appears to me a perfectly legitimate one, and should be granted.

T. W. Ritchie, Q. C., for plaintiffs.

Robertson & Co., for defendants.

DEVLIN v. BEEMER.

Commission for obtaining security for contract—Failure to earn commission where contract is void.

The demand was to recover from the defendant $413.86 as commission due to plaintiff for the half-year beginning 15th December, 1879, for obtaining the security of his wife for defendant to the Government of Quebec for the execution of a contract for the erection of a bridge over the Chaudière at Ottawa. The defendant pleaded that the contract was *ultra vires* of the Commissioner who had signed it on behalf of the Government, by non-observance of the formalities required by 32 Vic., c. 15, s. 14, and, moreover, the Legislature in July had refused to ratify the contract, and therefore the security was a nullity, and further that the surety died shortly after the execution of the contract, and her security for the second year could not, therefore, be given, which was the year in question.

TORRANCE, J. The plaintiff cites against the irregularity of the contract, the Statute of Canada 42 Vic., c. 56, but that merely authorizes the Commissioner to make the contract, without ratifying acts already done, and it could not neutralize the requirements of the Quebec Act, which required the signature of the Secretary as well as of the Commissioner. I hold that the formalities required by the Quebec Act have not been observed by the Commissioner, and therefore that the security had not been validly given, and in consequence no commission has been earned.

Plea maintained and action dismissed.

Girouard & Co. for plaintiff.

Carter & Co. for defendant.

RECENT U. S. DECISIONS.

Judge—Relationship to Attorney.—The fact that the attorney of one party was a son of the judge before whom the action was tried, *held*, not to disqualify the judge from sitting as such upon the trial of the cause. *Sjorberg* v. *Nordin*, 5 Northwestern Reporter, 677.

Divorce — Habitual Drunkard — Cruelty. — A man who has a fixed habit of drinking to excess to such a degree as to disqualify him from attending to his business during the principal portion of the time usually devoted to business, will be regarded as an habitual drunkard. There may be legal cruelty sufficient as ground of divorce without any actual personal violence. Conduct that endangers, either apparently or in fact, the physical health or safety, to a degree rendering it physically and mentally impracticable for the party endangered to perform the duties imposed by marriage, will constitute cruel and inhuman treatment. — *Wheeler* v. *Wheeler*, 5 Northwestern Reporter, 689.

Elevators—Mixing Grain.—Where grain in an elevator is mixed in a common mass with that of other owners, and of a like grade and kind, the depositors become tenants in common of the mass, according to the quantity owned by each, with a right of severance at any time. The owner of the elevator does not acquire title to the wheat deposited because he may own a portion of the common mass, nor because the wheat in the elevator may all have been shipped out and replaced by other wheat.—*Nelson* v. *Brown*, 5 Northwestern Reporter, 719.

Insurance—Temporary vacation of premises.—Where a policy of insurance provided that the same should be void if the premises became vacant and unoccupied, *held*, that a mere temporary absence of the occupants, as where they were called away to visit a sick relative, would not render the policy void.—*Stupetzki* v. *Transatlantic Fire Insurance Co.* (Supreme Court, Minnesota, April 21, 1880.)