

for the full price upon default in payment, and a concurrent right to resume possession of the machine. The mere fact of selling the machine had not any other effect than to fix the value of the machine as deteriorated by the defendant's use of it.

Held, per ROBERTSON, J., that the plaintiffs had no right to recover. By resuming possession they to all intents put an end to the contract. They were not necessarily bound to assume that position; they could have sued on the promissory notes, and left the possession in the defendant; but having elected to resume possession they had no cause of action for whatever may be due on the purchase money.

Hoyles, Q.C., and *Chisholm* for the plaintiffs.
J. M. Clark for the defendants.

Full Court.]

[Sept. 6.]

ATTORNEY-GENERAL DOMINION *v.* ATTORNEY-GENERAL ONTARIO.

Constitutional Law—Validity of 51 Vict., c. 5—Lieutenant-Governor—Pardoning power.

Held, that the Act of the Ontario Legislature, 51 Vict., c. 5, being an Act respecting the executive administration of the laws of this Province, is *intra vires*.

Per BOYD, C. No change is aimed at by the Act in the office of Lieutenant-Governor as such; but rather important and congruous functions are sought to be added thereto, to be administered by that chief public officer by whom, through the Dominion, the Province is connected with the Queen. As to section 2, relating to the pardoning power, the power to pass laws implies necessarily the power to execute or to suspend the execution of these laws, else the concession of self-government in domestic affairs is a delusion. Sovereign power is a unity, and though distributed in different channels and under different names it must be politically and organically identical throughout the empire. The local legislature which creates the offence has power to suspend the sentence, to commute or remit the punishment. The royal prerogative in its large sense as exercisable in reference to crime, this Statute does not purport to interfere with. It may be classified as one made in relation to the imposition of punishment; or from another point of view as one for the administration of justice in the Province.

C. Robinson, Q.C., and *Lefroy*, for the Attorney-General of the Dominion.

E. Blake, Q.C., and *A. E. Irving*, Q.C., for the Attorney-General of Ontario.

Div'l Ct.]

[Oct. 18.]

CENTRAL BANK OF CANADA *v.* GARLAND.

Banks and banking—Discount of promissory notes—Right of bank to recover accessory securities.

A tradesman sold goods to customers, taking promissory notes for the price and also hire receipts by which the property remained in him till full payment was made. The notes were discounted through the medium of a third person by the plaintiffs, who were made aware when the line of discount was opened of the course of dealing and of the securities held. They were not, however, put in actual possession of the securities; and there was no express contract in regard to them. In an action to recover the securities or their proceeds from the assignee for creditors of the tradesman,

Held, that the securities were accessory to the debt; that in equity the transfer of the notes was a transfer of the securities; that the defendant was in no higher position than his assignor, and could not resist the claim to have the receipts accompany the notes; and that it was not material that the relation of assignor and assignee did not immediately exist between the tradesman and the plaintiffs.

W. R. Meredith, Q.C., for plaintiffs.

Watson, Q.C., and *Masten*, for defendants.

FALCONBRIDGE, J.]

[Aug. 19.]

BAIN *v.* ÆTNA LIFE INSURANCE CO.

Insurance—Life—Endowment participating plan—Right of insured to profits—Divisible surplus—Discretion of actuary and directors—Statements of company in letters and pamphlets.

The plaintiff insured with the defendants upon their endowment participating plan, and by the contract of insurance the defendants agreed to pay him at the end of a specified period, if he survived, a certain sum, together with his share of the profits made in that branch of the business during the period.