

The origin, both of the suit for specific performance and of the suit for relief against a re-entry for non-payment of rent, is in the equitable jurisdiction of the court; the compelling performance in the one and the granting relief in the other is in the judicial discretion of the court, and in each the court has regard to the conduct of the party seeking to compel such performance or to obtain such relief.

Wallace Nesbitt for the plaintiff.

Walter Cassels, Q.C., for the defendant.

Common Pleas Division.

Dist. Court.]

[Dec. 5.

STARES *v.* MACKELCAN.

Chattel mortgage—Renewal—Solicitor's liability—Omissions from mortgage—Effect of.

The defendants, who were solicitors under instructions for that purpose, took a chattel mortgage on E.'s goods, which was duly registered and forwarded to the plaintiff at W., where she lived. The mortgage was made on October 24th, 1888, and on October 21st, 1889, the defendant posted a letter to her notifying her that the mortgage should be renewed, which in due course should have reached her on the 22nd, giving ample time to renew, but which she did not receive until November 1st, after the time for renewal had expired.

Held, that no negligence on the defendant's part was shown.

Per ROSE, J., *quære*: Was any duty imposed upon the solicitors to give notice to the plaintiff of the necessity for renewal?

After the time for renewal had expired, the plaintiff consulted the defendants, and they drew up a new mortgage, but which they advised her would not be valid against E.'s creditors; and it was subsequently abandoned on this ground. From this mortgage was omitted the "stock in trade," the most valuable portion of the security, while from the first mortgage was omitted a provision for the mortgage covering substituted goods.

Held, that these omissions did not, under the circumstances, affect the plaintiff's rights, and therefore constituted no ground for an action against the defendants.

Wallace Nesbitt for the plaintiff.

MacKelcan, Q.C., for the defendants.

REGINA *v.* ROWE.

[Feb. 1.

Liquor License Act—Defendant—Whether compellable to give evidence.

On the trial of an offence under the Liquor License Act, R.S.O., c. 194, the giving of evidence is governed by Ontario legislation, and under s. 9 of R.S.O., c. 6, the defendant is neither a competent nor a compellable witness.

The Dominion and Provincial legislation on the subject considered.

DuVernet for the applicant.

J. R. Cartwright, Q.C., *contra*.

Practice.

Court of Appeal.]

[Jan. 8.

BEGG *v.* ELLISON.

Parties—Specific performance—Title to land—Interest of strangers in land—Adding them as third parties or defendants—Rules 328-331.

In an action by vendors against the purchaser for specific performance of a contract for the sale of land, it was alleged in the defence that the plaintiffs were the owners of an undivided half interest only in the land, and had no title to the other half; and in the reply that if the persons alleged to be the owners of the other half interest ever had any interest, it was barred by the Statute of Limitations, and the plaintiffs were the sole owners. The plaintiffs also alleged that the defendant had accepted the title. The plaintiffs were in possession. Upon the application of the defendant, before the trial, an order was made in Chambers allowing the defendant to serve a third-party notice upon the persons alleged to be the owners of the other half. This order was set aside by a Divisional Court and an order made staying all proceedings in the action until the plaintiffs should add the third parties as defendants to the action and should make the necessary allegations against them so as to properly raise the question of the title to that part of the land to which they were alleged to have a claim.

Held, that neither order should have been made.

Rules 329 and 331 did not apply because it was not a case for contribution, indemnity, or